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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Peter H. Kang, Magistrate Judge

IN RE: SOCIAL MEDIA)
ADOLESCENT ADDICTION/PERSONAL)
INJURY PRODUCTS LIABILITY)
LITIGATION,)
) NO. C 22-md-03047-YGR (PHK)
)
)
)

San Francisco, California
Thursday, January 25, 2024

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Thursday - January 25, 2024

1:05 p.m.

P R O C E E D I N G S

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THE CLERK: Please remain seated and come to order.

The Honorable Peter H. Kang presiding.

Now calling 22-md-3047-YGR, Rodriguez v. Meta Platforms,
Incorporated.

Counsel, please approach the podiums and state appearances
when speaking.

MR. WARREN: Good afternoon, Your Honor. Previn
Warren for the personal injury school district and local
government entity plaintiffs.

THE COURT: Good afternoon.

MR. WARREN: Good afternoon.

MS. SIMONSEN: Good afternoon, Your Honor. Apologies.
I thought we might all be doing appearances. Ashley Simonsen
from Covington & Burling for the Meta defendants.

THE COURT: Okay. And if anybody else is going to be
speaking on specific issues, for the folks on Zoom, please come
to the podium.

Thank you for your submissions and proposed discovery
plans and your reports.

So -- and I assume everybody has seen my order on the
protective order. So just out of curiosity, anybody planning
on appealing? Is that in the works?

1 **MR. WARREN:** I don't think we've reached agreement on
2 that, but I doubt it.

3 **THE COURT:** All right.

4 (Pause in proceedings.)

5 **THE COURT:** Okay. So I thought, just for ease of
6 agenda, just going through the report and then the proposed
7 discovery plan in order because that seems to make sense, but
8 if there's something that you want to talk about, at the top
9 that's not reflected in either, I'm happy to prioritize any
10 issue, in case there's something pressing that we need to
11 discuss right away.

12 **MR. WARREN:** That works.

13 **THE COURT:** So just want to double-check. The
14 30(b)(6) depositions, Snap, those are definitely going forward.
15 There's no problem? I see they were scheduled. They're all
16 set. Nothing to talk about.

17 **MR. BLAVIN:** That's correct, Your Honor.
18 Jonathan Blavin on behalf of Defendant Snap.
19 That's correct, Your Honor. They are scheduled.

20 **THE COURT:** And then so I guess next is ESI order.
21 So are you two ready to do the long march?

22 **MR. WARREN:** I'm not, but I will hand it off to the
23 person that is.

24 **MS. SIMONSEN:** Likewise, Your Honor.

25 **MR. AYERS:** Good afternoon. Christopher Ayers, Seeger

1 Weiss, on behalf of the plaintiffs.

2 **THE COURT:** Good afternoon.

3 **MS. FITERMAN:** Good afternoon, Your Honor. Amy
4 Fiterman on behalf of the TikTok defendants.

5 **THE COURT:** Good afternoon. And if I could find the
6 chart.

7 **MR. AYERS:** If I may, Your Honor, since we filed the
8 chart, the joint chart, the parties were able to reach
9 resolution on Issues 9 and Issues 10.

10 **THE COURT:** Great.

11 **MR. AYERS:** And so those are off the Court's plate.
12 Thank you.

13 **THE COURT:** Great.

14 **MR. AYERS:** Thank you.

15 (Pause in proceedings.)

16 **THE COURT:** I'm sorry. Give me your names again.

17 **MR. AYERS:** Sure. Chris Ayers on behalf of the
18 plaintiffs.

19 **MS. FITERMAN:** Amy Fiterman on behalf of the
20 defendants, specifically, TikTok.

21 **THE COURT:** Gotcha. All right. So let's start.

22 The questions I had -- I'll be issuing an order after
23 this, of course, proposed, with my final language for Issue 1
24 just to the parties. And I'm probably going to mix and match
25 some of the language from both parties on Issue 1. So we can

1 take a look at that.

2 On issue -- that's on, I guess, Issue 1, "Search
3 Methodologies." I don't have any questions there.

4 On Issue 1, Part -- Section 9, the "Hit Reports."

5 I'll try to speak up.

6 So normally, I would expect the hit report just to have
7 the number of hits per document and maybe the total out of the
8 total number of documents the report was run against.

9 Why do you need families and all the other -- all the
10 other information in the hit report?

11 Again, the general purpose of the hit report, I think is
12 to see whether or not the search terms were so overbroad or
13 expansive that it hit on too many documents.

14 **MR. AYERS:** Yeah. Thank you, Your Honor.

15 There's a couple of more key components to a hit report
16 that would provide more substantive information to allow the
17 parties to appropriately meet and confer related to the scope
18 of the search terms, and so having information related to the
19 unique hits.

20 And so oftentimes, you might -- just the number of hits
21 will let you know that it's culling, you know,
22 10,000 documents. But what you won't understand is that by
23 removing that search term how many unique hits you're losing,
24 so how many total documents you're not going to be culling that
25 other search terms won't also hit.

1 And so having the ability to have -- breakdown not only
2 the total documents that are hit by that search term, but the
3 total number of unique documents that other search terms won't
4 also be hitting is a key component to it, as well as then
5 understanding the family members that go along with it.

6 Oftentimes -- oftentimes, when you're talking about total
7 documents versus family members that are hit versus -- because
8 these -- because the review process is being conducted in a
9 full-family production, it's useful to have -- to understand
10 how many total documents are being -- the family members
11 together with the parent document that are going to be
12 reviewed.

13 Oftentimes -- because when you're looking at this and then
14 you have the duplication process on top of it, because that way
15 you can actually break down. So when you're talking about
16 total documents, maybe like 10,000 documents, well, then once
17 you know that you're talking about unique documents, which may
18 be only a thousand documents that are unique, and then of
19 that -- of that set, you're really -- after deduplication
20 you're only talking about 500 documents that actually need to
21 be removed.

22 And then of that 5,000, you're really only talking about
23 parent documents that are pulling in or -- or other family
24 members that are -- so really, now all of a sudden, you're
25 really talking about a number of, like, 300 documents in this

1 example. And so the burden of really reviewing that 300
2 documents for production is not very substantial compared to
3 that original number of just pure hits of 10,000.

4 So it just gives you additional metrics in the ability for
5 the parties to confer about, to hopefully reach resolution on,
6 and to avoid bringing these issues -- bringing disputes over
7 search terms to Your Honor.

8 **MS. FITERMAN:** Your Honor, the plaintiffs put far more
9 into hit reports than hit reports are actually meant to do, are
10 putting far more emphasis on what they can or can't do, just
11 based on the level of detail that they're asking for.

12 We've got four different defendants here who maintain
13 their documents in different ways. We'll be collecting them
14 differently. And so our proposal takes a much more holistic
15 approach to the real purpose behind a hit report, and we also
16 note that specifically the request for deduplication across
17 custodians and data sources oftentimes isn't even possible,
18 depending on how the documents have been collected and those
19 reports are run.

20 So just from a feasibility perspective, extra burden that
21 really isn't going to get us anywhere, the defendants are
22 proposing what is very standard language to use on hit reports.

23 **THE COURT:** How much of a burden is it to include
24 unique hits, unique document hits in the report?

25 **MS. FITERMAN:** I think the concern there, Your Honor,

1 is regarding the deduplication efforts and trying to identify
2 what truly is a unique hit. I can't --

3 **THE COURT:** Let me stop you there. I understood you
4 to mean unique hits, not as to deduplication. Or is it -- did
5 that go to deduplication or whether it was a document that came
6 up in another search as opposed to two of the same documents
7 that came up in one search?

8 **MR. AYERS:** Thank you, Your Honor. Chris Ayers on
9 behalf of plaintiffs.

10 Yes, the unique hits is about how -- is about the
11 particular documents that that search term that's at issue will
12 hit as opposed to other search terms that may be agreed
13 upon. And so it isolates how many unique documents would be
14 lost if you remove that search term from the collection. So it
15 does not have to do specifically with deduplication.

16 **MS. FITERMAN:** Okay.

17 **THE COURT:** That definition of unique hits, does that
18 help allay your concern about deduplication?

19 **MS. FITERMAN:** I think that makes sense, Your Honor,
20 yes.

21 **THE COURT:** Okay. So -- all right.

22 But as I understand, Mr. Ayers, your request for family
23 members would implicate deduplication -- some form of
24 deduplication; right?

25 **MR. AYERS:** Well, no, the family members also wouldn't

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1 necessarily do deduplication.

2 How we -- how the parties have agreed to -- in the ESI
3 protocol and is common practice is for full-family productions,
4 that meaning that within the family of documents, the parents
5 and the children, if any of one of those documents hits a --
6 hits a search term or has relevant and responsive information,
7 then the whole family would be produced.

8 And so by providing the information related to the new
9 kids -- on the children and the parent, we provide additional
10 information about the number of documents that are going to be
11 reviewed and processed, and it's a helpful metric.

12 But I will say if -- if it's a choice, which is more
13 important, understanding the unique documents that hits the
14 search term is a more valuable metric, while -- while in
15 numerous cases I've -- we've had hit reports that provide for
16 those metrics, and even more information such as unique
17 identifiers, which we've removed from this requirement because
18 that way you can really track the document when it has a unique
19 identifier. But we've removed and agreed not to push on that.

20 But the unique -- the unique hits is a really valuable
21 metric as well as the children. But, I mean, if Your Honor is
22 trying to split the baby, then I would suggest that we -- that
23 we get the unique document hits.

24 **THE COURT:** I'm not splitting babies here.

25 (Laughter.)

1 **THE COURT:** So if you use what you've called the
2 "industry standard hit reports," does that not include family
3 member identification?

4 **MS. FITERMAN:** It can.

5 **THE COURT:** Okay.

6 **MS. FITERMAN:** It can.

7 **THE COURT:** Then that gives me no burden there; right?

8 **MS. FITERMAN:** Well, I think, Your Honor, the point is
9 just that we want to do this just as close to what industry
10 standard is, and the level of detail that plaintiffs have been
11 asking for we think goes beyond that. But if they're looking
12 for unique identifiers, then we can do whatever the tools can
13 do but not beyond that; that's the point.

14 **THE COURT:** All right. So I'll still think about it a
15 little bit, but what I'm inclined to do is do essentially A and
16 B in the plaintiffs' proposal, that is document hits and unique
17 document hits, as you've defined "unique."

18 **MR. AYERS:** Understood.

19 And, Your Honor, I just want to indicate that the standard
20 technologies that the defendants plan to use have the
21 capabilities to provide all of this information. It's normal
22 course in many litigations that I have done, and have provided
23 no burden or other obstacles.

24 So the idea that it's not standard is not quite accurate
25 because it is very standard. I've done it in numerous

1 litigations. But -- and the technology that they use have
2 these full capabilities to provide unique hits as well as
3 unique family members and to break it down like that.

4 I just wanted to provide that extra input.

5 **THE COURT:** Does the tool you're using have the
6 capability of providing just by selecting providing families
7 and unique family members?

8 **MS. FITERMAN:** The defendants at this point haven't
9 all indicated what tools they'll be using for that, so there
10 could be difference between that.

11 But I think as long as we're agreeing that the tool can do
12 it and the burden isn't there, that it's doable as long as it
13 isn't overburdening the parties and slowing the process down.

14 **THE COURT:** All right. Again, I'm inclined to accept
15 A and B, and here's my proposal -- is if in meet and confers on
16 whether search terms need to be modified or not, there is a
17 dispute that implicates a need-to-know family members for a
18 particular numbers of family members for search terms, I would
19 hope you could come to agreement on a case-by-case basis at
20 that point for additional exchange of information.

21 **MS. FITERMAN:** Thank you, Your Honor.

22 **MR. AYERS:** Thank you, Your Honor.

23 **THE COURT:** Okay. So on the proposal on TAR --
24 substantively, I didn't see a huge difference between the
25 parties' proposal. There's maybe a little more detail in the

1 defense propose, so I'm just inclined to adopt the Defense
2 proposal, but I'll hear from whoever wants to talk to -- talk
3 to the point.

4 **MR. AYERS:** If I may Your Honor, Christopher Ayers on
5 behalf of the plaintiffs.

6 TAR -- TAR is -- can be extremely valuable and -- tool for
7 identification of responsive information. In fact, it can be
8 far superior to search terms. You know, research has indicated
9 that TAR, when done cooperatively and transparently, can reach
10 as much as 80 percent of responsive material, whereas search
11 terms oftentimes will miss 80 percent of responsive material
12 and only cull roughly 20, 25 percent because it's a much more
13 superior concept.

14 However, TAR, as a tool, is -- it follows the -- follows
15 the notion of garbage in, garbage out in the sense that you
16 need a sophisticated TAR protocol to talk about not only just
17 the disclosure of the tool that's going to be used, but you
18 need really, you -- need to be done transparently,
19 cooperatively, about how that tool is going to be trained.

20 And this is why, when TAR is used, Courts have required
21 the parties to set forth a TAR protocol to really specify
22 transparently of how the tool is going to be used, how it's
23 going to be trained, with what documents. And generally,
24 Courts have required that they be done cooperatively and in a
25 transparent way.

1 What defendants are contemplating is that there is not a
2 TAR protocol that the parties engage in, there is not a
3 transparent nature of -- through cooperation of how it's going
4 to be trained, the disclosure of what -- how was it trained,
5 any type of even the disclosure, rather than even having
6 plaintiff input, there's not going to be a TAR protocol.

7 What they plan to do is just disclose the tool. But the
8 tool alone does not provide the plaintiffs with enough
9 resources and enough insight into the actual training. And so,
10 if it's not trained properly, it's not going to work. It
11 really is -- it follows the notion of garbage in, garbage out.
12 And so if it's not trained properly, it's not going to identify
13 responsive information.

14 You're not going to get the 80 percent responsive rate.
15 You're going to get something much lower. You're going to miss
16 the substantial documents. So this is why Courts have required
17 cooperation, transparency, and a separate protocol spelling out
18 how TAR would be used.

19 And so our provision requires that it not just be
20 disclosed, but that the parties cooperatively use it --
21 particularly here, where the defendants are proposing to use a
22 mix of search methodologies. So they propose to use search
23 terms in combination with TAR, which if done improperly and not
24 appropriately, what you're getting is -- is you're getting
25 search terms which will cull 25 percent of responsive

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1 information, and then you're applying TAR to that. So now
2 you're getting 80 percent of 20 percent. Right?

3 And so if it's not done transparently, what we're going to
4 get is going to be a small fraction of responsive information
5 that defendants have and possess.

6 **MS. FITERMAN:** Your Honor, Amy Fiterman on behalf of
7 the defendants.

8 All culling through the discovery process, if not done
9 properly, will reach poor results. Both sides agree on that.

10 However, what plaintiffs have proposed is to insert
11 themselves into the obligations and responsibilities of each of
12 the defendants to follow both the Federal Rules as well as the
13 ESI guidelines that this Court set out.

14 And so the defendants' position is that we are willing to
15 be transparent. We're willing to identify the fact that TAR is
16 being used, the tools that are being used, which will inform
17 the plaintiffs as to what those tools can do and how they work.

18 But as far as negotiating a specific protocol and having
19 the plaintiffs be in the business of how the defendants are
20 identifying those documents goes too far and, we submit, is
21 contrary to what the Federal Rules and the ESI guidelines
22 require.

23 **THE COURT:** Okay. So for purposes of this ESI order,
24 nobody has presented me with a proposed TAR protocol at all.
25 So there is no TAR protocol for purposes of this order.

1 Parties are free to try to negotiate a separate TAR
2 protocol if you want; and if you really think it's that
3 important, you can certainly file a motion later on, if you
4 reach impasse on the issue, to see, you know, if I can
5 essentially issue a TAR order based on a protocol that you
6 propose.

7 But for purposes of this ESI order, I don't think the
8 language in defendants' proposal precludes a TAR protocol being
9 negotiated and at least discussed separately.

10 Did I miss some language in there that precludes that?

11 **MR. AYERS:** It doesn't -- I would say it's
12 obviously -- defendants' language is silent on a TAR protocol,
13 but it certainly --

14 **THE COURT:** Now, you've heard me say it's open-ended.
15 Right?

16 **MR. AYERS:** But it certainly doesn't contemplate the
17 sharing of the transparent process of how they're going to use
18 it.

19 **THE COURT:** This is where I want you to negotiate and
20 discuss more, because there may be a compromise here between
21 the parties on how much information to disclose over and beyond
22 what this particular ESI order is going to require, and you're
23 certainly free to try to negotiate a further exchange of
24 additional information.

25 I assume -- and maybe I'm assuming incorrectly -- the

1 defendants individually have not each decided which TAR tool
2 they're going to use, or have they all decided which one
3 they're going to use?

4 **MS. FITERMAN:** They have not decided. And, in fact,
5 not all defendants have decided if they are going to use TAR.

6 **THE COURT:** So to that extent, also, I think, trying
7 to talk about the details of a TAR protocol or whether I
8 should -- whether you should agree to one, whether I should
9 enter one, is a little premature, until they've identified one
10 to you at least. And -- or at least you can start the
11 discussion about trying to negotiate one.

12 But I think -- I don't want to hold up the ESI order for
13 what could be a separate -- sounds like a separate issue.

14 **MR. AYERS:** Understood, Your Honor. And that's why
15 our plaintiffs' language did suggest, if a party does plan to
16 use TAR, that they would go through this process of disclosure
17 and negotiating a TAR protocol without spelling out that. But
18 I understand Your Honor's --

19 **THE COURT:** The order is not going to preclude it or
20 require it; it's up to you between counsel, as a strategic
21 matter, to decide whether it's something you want to pursue or
22 not.

23 **MR. AYERS:** Thank you, Your Honor.

24 **THE COURT:** All right. Let's see.

25 On validation I have no questions on, but I'll give the

1 parties a chance to say anything, if they want, on their
2 respective proposals.

3 **MR. AYERS:** Sure.

4 Validation quality control metrics are super important in
5 the context of when search methodologies are being used. And
6 they're common practice to, you know, require them.

7 Technology -- technology advanced tools, however cutting
8 edge they may be, will not yield a successful outcome unless
9 their use is driven by people who understand the circumstances
10 and requirements of the case, guided by thoughtful and
11 well-defined methodologies, and unless their results are
12 measured for accuracy.

13 Recall must be the standard upon which validation is
14 measured. Recall is the most important search and review
15 metric. It's about knowing, with a high level of confidence,
16 how well your search and review process is working to find
17 responsive information. Recall is what tells us that. Recall
18 is the percentage of the total responsive documents in a
19 document population that search or review processes actually
20 find.

21 And so what the plaintiffs' validation metric language
22 does is it sets recall as the goal. Now, it doesn't spell out
23 how and what validation each party will conduct, but it sets
24 out the goal that recall, an appropriate level of recall,
25 end-to-end recall, will be the goal that the parties seek to.

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1 And that must be the standard.

2 Providing for a wall between -- to understand -- between a
3 party -- the opposing party and understanding what validation
4 and quality control metrics would be used, is inappropriate.

5 So defendants' language where they set only upon a showing
6 of good cause would the plaintiffs be able to understand what
7 validation the defendants did, is just inappropriate. There
8 should be transparent quality control measures set in place.

9 And this is exactly what -- what Judge Gonzalez Rogers
10 and -- stated in the *In Re: Lithium Ion Batteries Antitrust*
11 *Litigation*, where she granted the plaintiffs' request to
12 incorporate a provision regarding quantitative sampling of
13 documents returned by disputed search terms in the search
14 protocol.

15 **THE COURT:** What's the burden of providing at least
16 just the recall numbers to the other side?

17 **MS. FITERMAN:** Well, the problem, Your Honor -- Amy
18 Fiterman on behalf of defendants.

19 The defendants' issue with plaintiffs' language here is
20 that the plaintiffs are inserting themselves into the discovery
21 process, again, that is the responsibility of the defendants.

22 And so --

23 **THE COURT:** Well, let's -- getting divorced a little
24 bit from the exact language here.

25 The concept of sharing recall numbers to the other side,

1 is that problematic? It seems to be not a fairly burdensome
2 request.

3 **MS. FITERMAN:** It's something, I think that each
4 defendant would have to assess and discuss further with the
5 plaintiffs because plaintiffs' proposal goes far beyond that.

6 So if we're just talking about the recall issue, that may
7 be something that the parties can reach agreement on. But in
8 the large scheme of where the plaintiffs are trying to go with
9 this validation, it goes far beyond that, which is the concern.

10 **THE COURT:** I'm trying to take this in baby steps.

11 So can the defendants agree that part of what they
12 consider to be reasonable additional information would be at
13 least the actual recall numbers from their production?

14 **MS. FITERMAN:** We may need each defendant to come up.

15 I'm trying to speak on behalf of all of the defendants
16 here today, but that's a very defendant-specific question, and
17 I don't want to speak out of turn for any of the defendants.

18 So we can confer and follow-up later.

19 **THE COURT:** As a -- I mean, it seems to me, that
20 should be a number that should be able to be spit out by your
21 tool; right? So why don't you confer with your codefendant
22 group and tell me if somebody objects to at least sharing
23 recall.

24 **MS. FITERMAN:** Would you like me to do that now?

25 **THE COURT:** Yes.

1 **MS. FITERMAN:** Okay. Thank you.

2 (Pause in proceedings.)

3 **MS. FITERMAN:** On that one issue, Your Honor, we can
4 agree.

5 **THE COURT:** Okay. See? Compromise is possible.

6 (Laughter.)

7 **THE COURT:** Here is where I'm inclined to go with
8 this: Is "define request for additional information" to
9 include the recall data for each production.

10 All right. So at least you'll have the metric for the
11 actual production that was given to you. And then, from there,
12 expect the parties, if there is a dispute over that, whether
13 that number is appropriate or not, then you can have further
14 meet and confers on -- to follow that up -- because it's so
15 speculative whether the recall rate is going to be, you know,
16 satisfactory to plaintiffs or not.

17 **MR. AYERS:** That's right, Your Honor.

18 Could I ask that there be disclosure of the actual
19 validation procedures that were employed to reach the recall?

20 **THE COURT:** Why don't you wait to see the recall.
21 Because what if there's no dispute? What if the recall numbers
22 are so robust that --

23 **MR. AYERS:** Well, the problem is if we don't
24 understand what was done to actually reach that number, just
25 the disclosure of the methodology being used would provide

1 insight as to the accuracy of the recall number being used.

2 I mean, if they used a -- if they used some, you know,
3 methodology that wasn't well accepted within the community, or
4 was proven to be inaccurate and not -- and not a methodology
5 that should be used to actually reach recall, calculate recall,
6 then that number would have less meaning, and we would have
7 further questions without -- without understanding that.

8 So we're not necessarily inserting ourselves into that
9 process, but we're just asking for a reasonable amount of
10 disclosure so that we can understand what was done and what the
11 result was.

12 **THE COURT:** So you're asking for them to identify how
13 they got the recall number?

14 **MR. AYERS:** Yes.

15 **THE COURT:** Again, it's usually just spit out by the
16 e-discovery tool, if I'm understanding --

17 **MR. AYERS:** Usually, after a certain sampling of
18 documents and how that was done.

19 **THE COURT:** Is that difficult to give them?

20 **MS. FITERMAN:** Your Honor, what I heard Mr. Ayers to
21 say was that they want a window into the entire validation
22 procedure and process, that we need to disclose that as if
23 we're going to be using validation procedures that are subpar,
24 which is what defendants object to.

25 All of these defendants have highly sophisticated

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1 well-respected vendors who are assisting them in this
2 collection. And, again, it's -- we're inching towards putting
3 the plaintiffs right into our obligations and responsibilities.

4 We're fine producing the recall numbers, but letting them
5 dig in behind and understand and offer input and opinions into
6 the validation procedures themselves is what the defendants
7 object to.

8 **THE COURT:** Again, tell me if I'm misunderstanding the
9 way the tools work, but if you query the tool to give you the
10 recall number, if defendants were to disclose to you, "We
11 queried the tool to give us the recall number, and this is the
12 tool we used," is that -- isn't that enough for you to at least
13 have a basis to decide whether the recall number was produced
14 by a reliable tool?

15 **MR. AYERS:** Well, part of the -- part of the
16 product -- the recall is a product of a procedure of sampling a
17 certain number of documents, both from the null set, which are
18 the non-hits -- nonresponsive documents are relevant, but
19 non-hits versus the documents that were -- had hit a search
20 term.

21 And so it's this combination of the sampling and
22 understanding whether you had a statistically significant
23 sample size of that document. So it's really just the metrics
24 on how the recall was calculated. And this isn't inserting
25 that a -- plaintiffs into the process. Rather, it's just not,

1 meaning that the discovery process isn't a black box upon
2 which -- that there's no insight to.

3 The parties shouldn't have the ability to do whatever they
4 want and just hand over documents. They need -- there should
5 be disclosure about the methodologies being used on both -- to
6 actually cull the documents -- right? -- by the search term
7 "TAR," et cetera, but also how to validate that shouldn't be
8 also a black box behind which there's no insight to unless
9 there's a problem, because we won't know unless we have a
10 better sense of the sample size, the ability of how that was
11 done, as well as how that reached the result.

12 And that's all information available to them by the tool
13 and can be provided with the same time. This was the corpus,
14 these are the samples we tested, and this was the result. It's
15 all there available for them from the tool. It's just
16 providing, instead of just the recall number, providing this
17 additional information.

18 **THE COURT:** Again, sort of -- when you query the tool
19 to give you a recall number, do you set certain parameters?

20 **MS. FITERMAN:** Yes, Your Honor. And the recall
21 disclosure typically happens at the end of the completion of a
22 review process. So what Mr. Ayers is suggesting is some kind
23 of iterative process where they're going to be understanding
24 how we're doing validation and offering opinions as to whether
25 it's proper or adequate or not.

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1 But that's not how this works. And so if the tools are
2 industry standard tools, the vendors are doing what the vendors
3 are supposed to be doing -- which there's no suggestion that
4 they're not here. This is operating from a position of
5 mistrust before any process has started whatsoever, and seeking
6 what we would consider discovery on discovery before any issues
7 have come up.

8 And so, Your Honor, respectfully, we think that disclosing
9 the recall numbers during the process when that's appropriately
10 supposed to happen is adequate, and if there are questions that
11 come up after that, we're certainly willing to discuss and meet
12 and confer. We've already disclosed, you know, tools and
13 vendors, so there really is the transparency there that the
14 plaintiffs are looking for.

15 **THE COURT:** Well, it's your phrasing of requested
16 additional information regarding the validation methods, so if
17 that additional information doesn't include the parameters used
18 to get the recall number, what would it include?

19 **MS. FITERMAN:** Well, I think we have to wait and see
20 what -- there's -- it's -- it is unclear exactly how far the
21 plaintiffs want to dig in behind all of this when, again, under
22 the Federal Rules, under the *Sedona Principles*, it's a
23 defendants' responsibility to do this level of validation and
24 make sure that their production is adequate and proper.

25 And plaintiffs are asking for us to prove that to them and

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1 show them all of that before there's even been any concern that
2 that isn't happening.

3 **THE COURT:** All right. Here's where I'm inclined --
4 everybody agrees you're going to disclose the recall data
5 results itself, the recall numbers themselves.

6 I do expect, if those numbers somehow are -- seem
7 inappropriate to the plaintiffs -- I assume there's going to
8 meet and confers on these issues, and I would encourage the
9 parties to be as fulsome in their exchanges of information to
10 avoid unnecessary motions practice.

11 And if that means disclosing the parameters used to get
12 those recall numbers and that would satisfy plaintiffs, that's
13 certainly one way to avoid unnecessary motions practice.

14 Do you understand, Ms. Fiterman?

15 **MS. FITERMAN:** I do understand. Thank you, Your
16 Honor.

17 **THE COURT:** All right. And I assume plaintiffs will
18 not seek to take unnecessary discovery on discovery, Mr. Ayers?

19 **MR. AYERS:** That's correct.

20 I mean, we don't view this as discovery on discovery, but
21 we certainly don't plan to take unnecessary discovery on
22 discovery.

23 So I would just ask that, to the extent there is
24 additional information that would be shared, that we don't --
25 that the Court not accept defendants' language upon requiring a

1 showing of good cause for the sharing of any other additional
2 information, other than the recall which Your Honor covered.

3 **THE COURT:** That's -- I didn't say this, but I was
4 inclined to strike that phrase anyway. So I expect everybody
5 to be operating in good faith here when raising disputes and
6 requests for information. So obviously, don't abuse the
7 ability to ask for information on behalf of the plaintiffs,
8 Mr. Ayers.

9 **MR. AYERS:** Understood, Your Honor. Thank you. We
10 won't.

11 **THE COURT:** Okay. We're already on Issue 3. Here we
12 go.

13 So this raises kind of a -- just a formatting comment I
14 had. I know I didn't ask for redlines, but I did ask for the
15 competing language to be lined up. And it took me a while to
16 realize, especially on the first subparagraph here, (e). The
17 only dispute appears to be that phrase "or linked internal or
18 nonpublic documents." Is that right?

19 Every -- you both agree on the rest of the language in
20 that?

21 **MS. FITERMAN:** Amy Fiterman on behalf of defendants.

22 I'm sorry, Your Honor. Which issue are we on? I thought
23 you said we were moving to Issue 3, so --

24 **THE COURT:** Yeah. Collection of hyperlinks and
25 production of families. Am I on the wrong page?

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1 **MR. AYERS:** This is Chris Ayers on behalf of
2 plaintiffs.

3 Yes, you're on the correct --

4 **THE COURT:** Production components?

5 **MR. AYERS:** -- correct, production components dealing
6 with the production of hyperlinks.

7 And you are correct that with respect to (e), the dispute
8 relates to whether embedded files and linked internal and
9 nonpublic documents are considered part of the family.

10 **THE COURT:** Right. So -- go ahead.

11 **MS. FITERMAN:** I'm sorry, Your Honor.

12 Actually, the issue there, Your Honor, is the inclusion of
13 "linked," so hyperlink. So plaintiffs are trying to identify
14 hyperlinks as part of family relationships, so the same as an
15 embedded file or an attachment, and that is what the defendants
16 have an issue with.

17 The tools that can be used to extract hyperlinks at this
18 point in time don't do that family association. There is not
19 that linking that's done when -- if a hyperlink can be
20 identified in the first instance, it can't be produced like
21 that. So this is one of those objections that defendants have
22 that is purely a technical issue that the plaintiffs are asking
23 for something that the tools do not currently do.

24 **MR. AYERS:** If I may, Your Honor?

25 It's -- there are technological tools, including most of

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1 the -- three of the four defendants use the Google Suite. The
2 Google Vault does actually allow for and provide for the --
3 actually, the extraction of the linked documents when they're
4 collecting the e-mail. So there is that.

5 But significantly, with respect to this subparagraph (e),
6 we're talking about the family relationship. We specifically
7 indicate that that is subject to paragraph 13 below, which is
8 13 -- which deals with the actual production of hyperlinks, so
9 however the Court ultimately decides on the production of
10 hyperlinks.

11 But what (e) is doing is it establishes that -- the linked
12 documents are modern attachments, and so to the extent that
13 they are ultimately produced, whether initially or after the
14 fact through a process that the parties -- where we request,
15 you know, certain linked documents within the documents and
16 they get produced -- that they are family members and that they
17 would be produced as full families, whether initially or after
18 the fact through that ultimate process.

19 If it's not as a family, then those linked documents could
20 just -- despite us asking for the linked documents to be
21 pulled, it wouldn't be produced with, you know, proper metadata
22 showing they are family members or they won't be produced in
23 sequence so we understand that they are, in fact, family
24 members.

25 Numerous courts have held that modern attachments are

1 within family documents, are within the -- of the family are
2 modern attachments, as just if you actually attached it.

3 The issue isn't whether they're family members. The issue
4 is ultimately 13, dealing with 13 below, which talks about how
5 the parties are going to get -- how the parties are going to
6 produce linked documents, whether they're going to do it
7 initially or whether they're going to do it subsequently, after
8 the production, pursuant to, you know, various identification
9 of documents --

10 **THE COURT:** Before we get to Part 13, on this subpart
11 (e), Ms. Fiterman, if I understand correctly, the only thing
12 plaintiffs are asking for is that the family relationships
13 between e-mails and hyperlinked documents just be maintained.

14 Is that -- am I understanding --

15 **MR. AYERS:** That's correct.

16 **THE COURT:** Not -- and that the actual methodology
17 from production be handled in the next paragraph 13.

18 Is that objectionable as they've clarified it?

19 **MS. FITERMAN:** It is objectionable, Your Honor,
20 because to the extent that any defendants are using tools that
21 can extract hyperlinks in the first instance, when they extract
22 those hyperlinks, there is not a family connection that's
23 contained within that.

24 So being asked to produce it, unless it's a manual effort
25 which is what the defendants are proposing, which is the

1 plaintiffs receive a document, they see a link within the
2 document, they ask a defendant to go retrieve that link, that
3 then we can identify that that link was related to those
4 documents.

5 But when links are simply being pulled out in the
6 collection effort in the first place, that is where the family
7 connection, the tool doesn't allow that to the extent --
8 depending on the tool being used.

9 And so that's -- the defendants' position is that
10 plaintiffs are asking us to do something that the tool itself
11 just simply can't do, in the first instance, if we're
12 collecting hyperlinks, you know, before -- you know, ultimate
13 production.

14 Additionally, it's -- numerous courts have also determined
15 that hyperlinks are not akin to attachments because --

16 **THE COURT:** I'm well aware of the split of authority
17 on the issue.

18 **MS. FITERMAN:** Yes, Your Honor.

19 And part of that is because when Mr. Ayers represents that
20 there's a link and it's in the documents so it's clearly an
21 attachment, a link may go out to a folder that contains
22 hundreds and hundreds of documents. And so -- and those
23 documents can be changed over time because they're their own
24 beast.

25 And so trying to -- asking the defendants to do this in

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1 the first instance, when we're producing documents on the front
2 end, from our perspective, is not possible.

3 **MR. AYERS:** If I may, Your Honor.

4 We're not -- (e) is not requesting that they do this in
5 the first instance, when they're producing the documents.

6 Paragraph 13, which deals with the production of
7 hyperlinks and how those will be produced, will deal with that.
8 And -- when we move to that next.

9 All (e) is doing is basically saying that modern
10 attachments are attachments, and that there are family members,
11 and so, whenever they're produced, they're going to be produced
12 and maintained as a family. And so even if it's subsequent,
13 doing this process that -- a process that both parties
14 proposed, ultimately, that there be a process after the
15 productions are made where there is an identification of
16 documents that have links in them, and how those documents are
17 produced.

18 So all (e) is doing is saying whenever hyperlinks
19 documents are produced, that the family relationship is going
20 to be maintained.

21 **MS. FITERMAN:** That's not how the defendants are
22 reading (e). It's listed "production components."

23 And so if they're asking us to produce hyperlinks in the
24 first instance when documents are first produced as opposed to
25 after production, and there's a conversation about asking for

1 hyperlinks, those are two different things.

2 So we may be talking past each other, but that's our
3 concern.

4 **MR. AYERS:** And it is subject, just for clarity -- and
5 this is something we have discussed in the meet and confers
6 related to plaintiffs' proposal.

7 We do specifically reference paragraph 13 below, which
8 suggests that to the extent that the hyperlinked documents are
9 family members, that is still subject to paragraph 13 below
10 which talks about how those documents will ultimately be
11 collected and matched and produced.

12 **THE COURT:** So do we even need this paragraph (e)?

13 **MR. AYERS:** We do.

14 **MS. FITERMAN:** From our perspective, no, Your Honor.

15 **THE COURT:** What is it doing that is not going to be
16 covered by what's in 13?

17 **MR. AYERS:** Well, 13 just talks about how linked
18 documents will necessarily be produced. But (e) is talking
19 about the family relationship being maintained. So they are
20 addressing two different things. That's why they work
21 together.

22 And E is also addressing other family -- just the family,
23 the -- necessarily of the production of family members with
24 children and how those are produced.

25 **THE COURT:** So it did sound to me like you're kind of

1 still talking past each other about when in the -- your, the
2 defendants', processing of documents, this maintenance and
3 preservation of family relationships has to occur. And what
4 I'm hearing plaintiffs say is it doesn't have to occur kind of
5 at some burdensome, early time. It just has to occur by the
6 time they get the documents.

7 Is that correct?

8 **MR. AYERS:** So if the process -- I mean, we're going
9 to get to 13, which if -- we have a difference of opinion on.

10 But if the Court -- if there's an after-the-fact process,
11 like an initial document gets in, there's not something where
12 we identify documents that have links in them. At the time
13 when they produce the linked documents that are -- the link to
14 the parent, that the family relationship will be maintained and
15 preserved at that time.

16 **MS. FITERMAN:** Your Honor, what the defendants are
17 saying is that the tools don't make those links. So within the
18 ESI protocol itself, we have certain metadata we've agreed to
19 provide, and obviously, attachments to e-mails or the family
20 connection is maintained.

21 Our position is -- and when we get to paragraph 13 on
22 hyperlinks, the plaintiffs are proposing that defendants do
23 export hyperlinked files in the first instance if they're using
24 those tools. And so that is an issue that we're going to run
25 into, and it's setting us up to not being able to comply with

1 the ESI protocol in the first instance if the tool simply won't
2 do it.

3 **THE COURT:** I'm trying to resolve (e) before we move
4 to 13. All right. Keep talking about 13.

5 So their language, plaintiffs' language in 13 says --
6 starts with the hyperlinked documents, blah-blah-blah. It says
7 "do not need to be produced in the first instance as part of
8 the same family group" -- right? -- "as the document residing
9 at the location which the hyperlink points."

10 So I don't --

11 **MS. FITERMAN:** Right after that, Your Honor, it says,
12 "Unless a party can export files during collection using Google
13 Vault for which Defendants Google, Snap, and TikTok already
14 have licenses for and use" --

15 **THE COURT:** Stop there. You're telling me your tools
16 don't do that, so the "unless" doesn't apply to you.

17 **MS. FITERMAN:** Two different things, Your Honor. I
18 apologize. Whether any of the defendants are using these tools
19 to extract hyperlinks is one question.

20 But even those tools have limits, and what plaintiffs are
21 asking us to do with regard to the attachments in the family,
22 those tools cannot do at this moment. That's the issue.

23 So they can -- if the defendant is using the tool and all
24 of the defendants are doing something differently and there are
25 certain documents and communications where there is no tool to

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1 extract hyperlinks, but where there is a tool and the defendant
2 is using it, those tools still have limits and one of those
3 limits is that family association in addition to others.

4 So to the extent that a defendant is using that particular
5 tool, it should just be limited to what that tool can do in the
6 normal course. You can't make a tool do something it can't.

7 **THE COURT:** I think, according to the proposal in the
8 briefing, it sounded like plaintiffs think the tools can do
9 that, so there seems to be a disconnect here.

10 **MR. AYERS:** Well, the tools, as reflected by the
11 documents that Google has published to the public about the
12 capabilities of Google Vault allow for -- in the initial
13 collection of documents to automatically extract linked
14 documents that are stored within the same, you know, Google
15 environment. And so those documents can automatically be
16 extracted and culled for production.

17 **THE COURT:** But can -- when they do that, can they
18 maintain the fam- -- can they populate the metadata to maintain
19 the family relationship?

20 That's what you're asking for it to do.

21 **MR. AYERS:** What I'm asking for is there to be -- the
22 family relationship be maintained. I do not have -- I can
23 provide that information to Your Honor, but I do not have
24 the -- I do not know, off the top of my head, whether they, as
25 counsel's suggesting, they're not capable of maintaining the

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1 family relationship. It seems from my reading of the document
2 that they could.

3 It seems that, like, they're extracting -- they're taking
4 the parent and then extracting the linked document, and they're
5 being produced together in sequence. So they are being
6 produced -- they are being collected together, and that -- they
7 could be produced together in the family environment.

8 Whether there needs to be some further, you know, task to
9 fill the metadata or not, and whether it automatically fills, I
10 do not know. I do know that they do -- are able to extract it
11 so they are collected together at one time. And that's
12 something that -- the reason why plaintiffs proposed that in
13 this paragraph is because to do it after the fact, plaintiff --
14 after it's collected, plaintiffs can't, you know,
15 automatically, through their technologies, cull those
16 documents.

17 We can try to match it up with document names. We can
18 obviously e-mail or send requests to -- of Bates numbers to the
19 defendants and ask them to then do their investigation and
20 produce the linked documents to us. But after collection, this
21 processability of this unique ability to actually use the
22 technology available to them to automatically pull them is
23 lost.

24 And so that's why we incorporated this procedure, that
25 they don't have to do it initially, unless they can do it

1 automatically without this manual effort as the technology
2 allows. Whether that automatically populates the metadata to
3 maintain and preserve the parent-child relationship, I'm not
4 quite certain.

5 But I do know that for authentication [sic] and for a
6 variety of reasons, having the parent and child relationship
7 preserved is really critical to understand when you're
8 examining a witness, for instance, understanding that these are
9 the linked documents, the attachments, to that parent e-mail,
10 for instance.

11 And so having them as a group, will save a lot of time and
12 energy during -- and disputes later on when we get to
13 depositions and we get to introducing evidence about the
14 authenticity [sic] of the actual attachments, if they're being
15 produced and the relationship is being preserved.

16 It becomes critical down the record, particularly when you
17 get to trial, deposition, summary judgment, those issues of
18 making sure that the attachments are authenticated and
19 preserved within the parent.

20 **THE COURT:** With respect to the Google tool and the
21 Microsoft tool, are you -- I mean, have you investigated --
22 you're sure none of them can -- they may be able to extract the
23 hyperlinked document, but they can't -- neither of them can
24 maintain or add to the metadata to indicate the family
25 relationship?

1 **MS. FITERMAN:** Your Honor, I can speak as to TikTok,
2 who -- we have investigated this. And, yes, we have been told
3 that the link isn't the -- being able to associate the
4 hyperlink with another particular document, that has to be a
5 manual process; it's not done automatically. And I could --
6 you know, other tools -- but our understanding is that's,
7 across the board, that's the level of the technology right now.
8 It's very new technology.

9 Your Honor, if I might, this -- this only underlines why
10 the defendants' position on this is the more reasonable
11 position in that what the defendants are proposing is that if
12 the plaintiffs get documents that have hyperlinks in them, they
13 come back to the defendants and ask if we can go identify
14 specific hyperlinks.

15 One, this greatly reduces volume. If we are having to
16 pull hyperlinks, if we're going to use these tools, that has to
17 be done in the initial collection. And so that's before search
18 terms have been run, that's before any other culling has
19 happened.

20 So the volume that is going to -- that's going to increase
21 if we have to pull all of those hyperlinks, at the initial
22 stage, when plaintiffs may have no interest in 90 percent of
23 those is why we have proposed that once we produce the
24 documents, if they ask us to go back, we're willing to go back
25 and identify those hyperlinks.

1 And if we can access those hyperlinks -- we're doing it
2 right now in the first set of requests for production that
3 plaintiffs have served on both TikTok and Meta. In fact,
4 TikTok received 75 requests for production related to either
5 going back and collecting hyperlinks or collecting a document
6 that was otherwise identified in another document that had been
7 produced.

8 So it's working. And we propose that that's a process
9 that we continue with. And that means that defendants who
10 haven't acquired these tools yet or who aren't using these
11 tools in this capacity yet aren't forced to start using tools
12 in a way they have not been using these tools, and that we
13 avoid the limits that these tools necessarily have. It also
14 keeps the families connected because that's a manual process
15 that we can then identify what those links were associated
16 with.

17 **THE COURT:** I mean, at the end of the day, doesn't
18 that get you the information the plaintiffs want and in an
19 actually more robust manner because it's now manually checked?

20 **MR. AYERS:** Yes and no, Your Honor.

21 So having the documents culled in the initial -- extracted
22 using these technologies that there's no dispute they have and
23 they use, omits this other big -- this other problem with
24 hyperlinked documents. Oftentimes there'll be an e-mail that
25 says, "Check this out. Here this is." And then there's a

1 link.

2 That e-mail is not going to identify any -- hit on any
3 potential search term, though that linked document certainly
4 will. And so having the -- these documents, the linked
5 documents extracted in the first instance when search terms are
6 applied, makes sure that search terms are being applied as they
7 normally would, traditionally, in the sense of applying across
8 the family.

9 In the -- after the fact, one of the problems with
10 defendants' proposals, even after the fact, even after if you
11 take away this initial culling, is first they apply an
12 arbitrary 500 documents per defendant, when --

13 **THE COURT:** We're not even there yet.

14 **MR. AYERS:** Right. I know, but then there's also this
15 other thing that plaintiff proposes that, it's not only about
16 pulling the linked documents that are identified in a produced
17 document, but it's the opposite.

18 If we find -- if there's a document that we know is a
19 collaborative document -- collaborative document that they will
20 then go out and potentially search for -- search the custodians
21 for e-mail traffic related to that cooperative collaborative
22 document that was produced that we didn't get e-mail traffic on
23 because it likely could have been here are revisions, here are
24 this, because we're losing that family metric.

25 So if we are going to not cull and extract using

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1 technologies that they already have, then we do need this
2 other -- this process after the fact of being able to identify
3 and -- able to identify the e-mail traffic -- right? -- the
4 parent of certain of these collaborative documents.

5 And so you need it both ways. You need to be able to
6 manually go and cull the linked documents that are embedded and
7 are attached to the parents that were produced, but also look
8 for the parent of some of these collaborative documents to
9 understand some of the e-mail traffic related to those
10 collaborative documents as well.

11 **THE COURT:** I didn't hear an objection to doing the
12 reverse search for e-mails relating to an otherwise responsive
13 document.

14 Is there an objection to doing that?

15 **MS. FITERMAN:** Your Honor, I have to admit that
16 75 percent of what Mr. Ayers was saying, I don't think, quite
17 honestly, it makes any sense in relation to what we're talking
18 about here.

19 And so, no, I don't agree. And additionally -- thank you.

20 Additionally, for Mr. Ayers to suggest that the defendants
21 have and use these tools is just flat out incorrect, and we've
22 shared as much.

23 But my steady folks in the back have just informed me --
24 which is what I presumed as well, is that backlinking to
25 e-mails is not possible with these tools.

1 And this goes to an issue that Mr. Ayers is making a lot
2 of presumptions and suppositions about what these tools do when
3 he already indicated he didn't even know if the tools could do
4 associations to families when we have repeated in three
5 different meet and confers that they cannot.

6 And so this is a lot of plaintiff supposing what these
7 tools can do when we've been very clear about, one, who's
8 actually using the tools; and two, what can the tools do.

9 And so it's a much cleaner process to do it the way that
10 defendants have proposed, and that's a very well-accepted
11 process when it comes to hyperlinks.

12 **MR. AYERS:** If -- Your Honor, I may.

13 Just for the purpose of the meet and confers, defendants
14 have not actually made those representations. So this is --
15 they continue to not reveal certain information on these meet
16 and confers. But not only did we have the counsel, we had
17 their technical personnel, and yet they remained silent about,
18 you know, this information that, you know, they're now relaying
19 to the Court.

20 I will say our proposal for after production is spelled
21 out, we lay out in our proposal there's a sub (i), and then
22 also a sub (2) -- sub (ii). And that second one deals with
23 this issue of the documents -- of whether these collaborative
24 documents and being able to, you know, provide a search -- and
25 you can search them through Doc ID, and there's various methods

1 for it, but the idea is is that if they're not going to be
2 culled and produced in the first instance, the extracted, then
3 we do need this process to deal with both of those scenarios
4 with linked documents.

5 **THE COURT:** All right. So first of all -- I mean, the
6 record in front of me is that the tools cannot give you the
7 family relationships automatically. So I -- you know, with --
8 unless -- I mean, you're always free, I guess, later on to show
9 me -- show the other side that this is wrong; but it sounds
10 like automatically populating and establishing the family
11 relationships in the metadata doesn't seem to be possible
12 technologically at this point.

13 So your proposal is trying to avoid manual populating of
14 those fields. Defendants are proposing to do that for you. I
15 just -- I don't see the problem there. I mean, it doesn't seem
16 like there's a technological fix to getting automatic family
17 relationships into the production.

18 On the issue of collaborative documents and other
19 documents, presumably, those will be produced; right?

20 And presumably, you will have e-mails from the authors and
21 the people who were on those collaborative documents. And I've
22 got to assume, with the number of document requests being
23 served here, that will include the e-mails that should attach
24 at least some versions of those documents. Not every e-mail is
25 going to say, "See this" or "Check this out."

1 So I think it's speculative whether, you know, you're
2 going to even be missing any e-mails that are relevant or
3 substantive in any way; right?

4 Because if it's truly a collaborative document and they're
5 just trading it back and forth in links, the document is a
6 substantive piece of evidence -- right? -- and piece of
7 discovery, not the cover e-mail that says, "Check this out."

8 **MR. AYERS:** Certainly, the document is a substantive
9 evidence, but the e-mails themselves discussing about who and
10 when -- and who and when edits and certain revisions are made
11 could be very important when it comes times to --

12 **THE COURT:** Wouldn't that be in the metadata of the
13 document itself?

14 **MR. AYERS:** No, it will not.

15 **THE COURT:** If it's a collaborative document --

16 **MR. AYERS:** My understanding --

17 **THE COURT:** -- tracked changes type -- most
18 collaborative tools for Word documents, for example, do track
19 different authors and different changes.

20 Tell me if I'm wrong.

21 **MR. AYERS:** My understanding, based on the
22 representations of counsel, when we're discussing various
23 metadata, is that Google Documents does not work the same way
24 as Microsoft Word, in our experience, indicating the various
25 authors; that oftentimes it only indicates the last-in-time

1 editor of the document as well as the last-in-time of those
2 edits. So you wouldn't necessarily get that metadata in the
3 produced document, and so if you didn't -- weren't -- didn't
4 have a way to do that.

5 And while we're -- all we're asking for is a process in
6 order to get that, if that situation does come around, is that
7 we're not just left with identifying linked documents of a --
8 produced, but we can do the inverse of trying to see if a
9 collaborative document we know has been e-mailed around that
10 we're not seeing -- that we have a very good understanding
11 would have been, based on our knowledge and experience, that we
12 can have a process in place to actually identify, to go back
13 and look to see if this document was actually e-mailed and who
14 was involved, because that information would not be included in
15 the Google Document's metadata necessarily, based upon what was
16 represented by the technical personnel during the meet and
17 confers.

18 **MS. FITERMAN:** If I might, Your Honor, and then we can
19 move on.

20 Mr. Ayers is just, again, presuming and supposing that
21 things can happen that we don't believe can happen. And this
22 is no different than if we produced a Word document that was in
23 somebody's, you know, desk site and wasn't attached to an
24 e-mail, how do we go back and figure out every place that that
25 particular document was ever e-mailed back and forth by

1 somebody?

2 That's not something that can be done. That's the reason
3 that we collect e-mail messages. We don't collect documents
4 and then try to figure out every time somebody might have
5 e-mailed that document.

6 So while I'm sure Mr. Ayers would like that, this just --
7 we're just -- we're not talking about things that are in the
8 realm of possibility right now. And we've gone far afield, I
9 think, of whether -- you know, how and when we produce
10 hyperlinks, which is the subject of Issue 3.

11 **THE COURT:** Just so I'm clear and the record is clear,
12 you're representing to the Court in your investigation, the
13 tools are incapable of doing backlinking searches?

14 **MS. FITERMAN:** Correct.

15 **THE COURT:** Okay. Submitted on this issue? Anything
16 more to say?

17 **MR. CHAPUT:** Isaac Chaput, Your Honor, from Covington
18 on behalf of the Meta defendants.

19 I just wanted to make one point clear because there are
20 representations both in plaintiffs' filing and today --

21 **THE COURT:** Slow down for the court reporter.

22 **MR. CHAPUT:** Absolutely. Sorry, Your Honor.

23 -- some representations about tools that Meta does or does
24 not use. And I just wanted the record to be clear that Meta
25 does not use or license the Microsoft Purview Premium

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1 eDiscovery product. So it's just off the table for us.

2 And Purview Premium, just so it's clear, is an all-in-one
3 e-discovery solution, so you can't layer that on top of
4 existing solutions either.

5 I just wanted that point to be clear. Thank you, Your
6 Honor.

7 **THE COURT:** All right. Issue 4, redactions.

8 So, again, this goes to one of my earlier comments. It
9 took me a while figuring out -- it looks like the parties -- it
10 got misnumbered, but Plaintiffs' C is Defendants' B, and
11 they're the same; right? Am I reading that correctly?

12 Or, no, C is C -- C is C. D is E. You agree on E? It
13 looks like you agree on most of F., most or lots of G, and all
14 of H. Is that...

15 **MR. AYERS:** That seems right, Your Honor.

16 **MS. FITERMAN:** Yes, Your Honor.

17 **THE COURT:** Okay. I probably should have asked for
18 some kind of, like, italicizing where you actually disagree,
19 so...

20 All right. So just so the record's clear, it looks like
21 you agree on large parts of A.

22 Everything in B, except for the first sentence in
23 plaintiffs' proposal.

24 You agree on all of C.

25 You agree on all of D, except the differences, "applicable

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1 law" versus "applicable U.S. law."

2 You agree on all of E.

3 You agree on all of F, except for the phrase "and
4 produced" before the word "natively."

5 And you agree with most of the first sentence of G, except
6 for the phrase "marks made in track changes."

7 And you agree on all of H.

8 Did I --

9 **MS. FITERMAN:** No, Your Honor. I'm sorry.

10 **THE COURT:** Where did I get it wrong?

11 **MS. FITERMAN:** Amy Fiterman for the defendants.

12 If you go to Section A, Your Honor, the first issue is the
13 definition of PII, and that's at the very end of Section A.

14 **THE COURT:** Okay.

15 **MS. FITERMAN:** Plaintiffs have linked that to, one,
16 Federal Rule of Civil Procedure 5.2, and then have excluded
17 types of PII that they suggest may otherwise be relevant or
18 responsive.

19 The defendants' position is that PII should not be limited
20 to FRCP 5.2. There is sensitive information that could be in a
21 document, including information, addresses, personal e-mail,
22 phone numbers that isn't contemplated by 502.

23 And then specifically there shouldn't be an exclusion for
24 information that is otherwise, quote, relevant or responsive.

25 Relevance is not the test when we're talking about

1 redacting PII, it's to keep certain information private. And
2 so the defendants need the ability to make those redactions in
3 accordance with -- for security and for privacy protection
4 reasons.

5 I think we all have a good understanding of what PII is by
6 this point in time. And the plaintiffs are trying to restrict
7 what the defendants can identify as PII. All that we're doing,
8 it doesn't mean that a document isn't going to be produced.
9 It's a question of what needs to be redacted within that
10 document.

11 And if the plaintiffs have a concern over what was
12 redacted, they certainly can ask and we can discuss it. But at
13 the first instance, the defendants can't be left guessing about
14 what the plaintiffs believe is relevant or responsive, and
15 whether or not something should be redacted or not. It's
16 usually quite clear what we need to redact for privacy
17 concerns.

18 **MR. AYERS:** Yes, Your Honor. So we have a -- the
19 multiple-tier, very-detailed protective order that has been
20 before the Court and -- multiple times. Confidential
21 information generally is protected by a confidentiality order.
22 Redaction is not necessary or even appropriate the majority of
23 the time.

24 However, plaintiffs are willing to accept and except from
25 the general no redaction policy of certain categories of

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1 information -- obviously, privileged and that information.

2 But when we get down to PII, there's -- we're agreeable to
3 limitations on the PII that can be redacted. Obviously, phone
4 numbers, personal addresses, e-mails -- certain personal e-mail
5 addresses, those things we can easily meet and confer about.

6 But when it comes down to information that's relevant and
7 responsive, independently to the claims and allegations in this
8 litigation, we have significant COPPA allegations. We have
9 allegations relating to personal injury and damages.

10 And so information related to a user's age, so the year of
11 birth -- the ages, years of birth, illnesses, injuries, medical
12 diagnosis, that information can very much be independently
13 relevant and should not be redacted -- should not be -- the
14 protective order covers and protects all of that information
15 from any type of disclosure to the public or otherwise.

16 And obviously, they follow -- the parties should conform
17 to Federal Rule of Civil Procedure 5.2 about what information
18 is actually filed with the Court. But when it comes to
19 redaction, it's unnecessary. The PO -- the PO, obviously, in
20 place perfectly protects that information; however, there are
21 these categories of information -- perfectly willing to
22 accommodate. But if it has independent legal significance, if
23 it's independently relevant to these claims, that information
24 shouldn't be redacted in the first instance.

25 **THE COURT:** All right.

1 **MS. FITERMAN:** We disagree, Your Honor. When we're
2 talking about users' ages, years of birth, things of that --
3 that's not limited to plaintiffs in this case. In fact, it
4 most likely won't be plaintiffs'. If it's in defendants'
5 documents, it's likely going to be other individuals who have
6 no part of this litigation and presumably may not want any part
7 of this litigation, or having their own private information
8 provided to other parties, regardless of whether a protective
9 order is in place.

10 PII redactions have been happening for years, and
11 protective orders are always in place in -- almost always in
12 place in civil litigation. There still needs to be an extra
13 layer of protection for redaction. And to the extent that the
14 plaintiffs received these documents and believed that something
15 has been redacted in error because they can see the totality of
16 the document and what was being discussed, the defendants are
17 always willing to go back and address that to determine if
18 there's something that was redacted that the plaintiffs believe
19 that they should have access to, and we can discuss that.

20 But as an initial matter, the defendants have to have the
21 ability to protect the privacy of information that's within
22 their documents.

23 **THE COURT:** Do you -- does your argument extend to the
24 ages and years of birth of non-plaintiffs or non-parties to the
25 case?

1 **MR. AYERS:** The PI -- personal injury plaintiffs, are
2 not the only plaintiffs in the litigation. There's also school
3 districts, government organizations, as well as the attorneys
4 general, who may have a view on this; but there's certainly
5 more than just individual plaintiffs at issue.

6 And so when you're talking about the -- talking about the
7 allegations revolving about the defendants' systematic systemic
8 failures to age gate related to our claims, these -- their
9 ability to try to redact and remove relevant responsive
10 information about their failure to age gate or -- permitting
11 children under the age of 13 to use, their knowing about them
12 using the platform, that's relevant information. The PO
13 protects any interest of non-parties that they have in this
14 litigation.

15 No one can see this information. They want to designate
16 certain of that information highly confidential. We can -- if
17 it falls within that, so be it, if it's confidential. But the
18 bottom line is that redaction of relevant information should
19 never be permitted.

20 Relevancy redaction -- and we're going to get to that in
21 the next bullet -- but this falls within relevancy redaction.
22 They're highly disfavored in courts all across the nation,
23 including this district, is that -- ever -- the redaction of
24 relevance should never be permitted. I'm sure that Thomas may
25 have some additional thoughts.

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1 **MR. HUYNH:** Thomas Huynh for the state attorneys
2 general. Thank you, Your Honor.

3 And with regards to this, yes, the state attorneys general
4 take the position -- with regards to the age information,
5 including the date of birth of children across the nation, the
6 states attorneys general takes the position that it is highly
7 relevant for our COPPA claims, especially as we're, you know,
8 interrogating and also investigating to what extent age gating
9 is appropriate, to what extent the platforms are directed
10 towards children, and to what extent they're engaging in proper
11 moderation and viewing or sorting out of the children.

12 So for us, like, all that information would be
13 appropriate. And in our meet and confers with defendants, we
14 have discussed the potential for, say, redacting the last name
15 or the first name of the child in order to mitigate these
16 privacy concerns. But with regards to a user's information and
17 their dates of birth and their ages, we find it to be highly
18 relevant to our COPPA claims. So we would urge Your Honor to
19 allow for that to be excluded from redactions.

20 **THE COURT:** What's the -- what's the problem with
21 redacting the last name?

22 **MS. FITERMAN:** Well, because, Your Honor, we have
23 certain obligations to protect privacy, and these are one --
24 these are individual notions that, you know, redactions are
25 happening. Again, if the plaintiffs see something and say,

1 "Can you unredact this? We think this is important. We want
2 to see what this is," then that can be done.

3 But on the initial piece of us having to make those
4 subjective -- the defendants having to make those subjective
5 decisions about what we should or shouldn't redact gets to be
6 overly burdensome and is going to slow down the process of
7 review.

8 So we suggest that it simply isn't necessary, that we be
9 allowed -- that defendants be allowed to make the redactions
10 that would normally be made for PII. And if the plaintiffs
11 have an issue with that, they can be negotiated on a
12 document-by-document basis.

13 I would also add, Your Honor, that with regard to the
14 states attorneys general, I am happy to have counsel for Meta
15 come up and address that issue because right now none of the
16 other defendants are producing documents that are going to be
17 going to the states attorney general in this litigation.

18 **MR. AYERS:** Sure. If I may, Your Honor.

19 The issues -- the issue -- it's kind of -- what's being
20 set forth is this process where they redact and then we have to
21 fight to unredact. It actually -- I mean, it takes this issue
22 and turns it on its head.

23 Courts have refused to permit relevancy redactions for the
24 purpose that having redactions, in the first instance, delays
25 production substantially because of the redaction process and

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1 the expense of redaction, often many months.

2 And so this idea that they should redact and then we
3 should come forward and have to unredact sets forth -- just is
4 a time-consuming, burdensome process on both ends, both the
5 delay of getting information that should be properly protected
6 under a protective order, and then the process of then having
7 to meet and confer and have a dispute before Your Honor about
8 unredacting relevant responsive information when they can
9 easily anonymize the data without having to release personal
10 information.

11 The year of birth itself is not personal identif- -- maybe
12 the full date. We're permitting the redaction of the month
13 or -- and day of the birthday, as well as the age of whether
14 someone is, you know, 12, 11, 10. We're not asking for -- is
15 not sensitive personal identifying information of any sort.

16 So -- and when there's injuries that are related to the
17 causation and the injury that's actually occurred caused by the
18 actual defendants, that obviously -- that should not be
19 redacted in any sense of the term. And so limiting this
20 information to the actual Federal Rules 5.2 would appropriately
21 further discovery in this -- in this case.

22 **THE COURT:** Okay. But it does sound like there is
23 room for agreement that certain types of PII can be redacted
24 without objection; is that -- right? You just haven't nailed
25 that down, exactly what those subcategories are?

1 **MR. AYERS:** Well, I think we have. Well, from the
2 plaintiffs' perspective, I think we have. We were permitting
3 the redaction of certain potential -- certain PII, with the
4 exception of the things that -- the items that are enumerated
5 there, including, you know --

6 **THE COURT:** It says "e.g.," so --

7 **MR. AYERS:** Well, stuff that is obviously otherwise
8 relevant or, you know, responsive. And so if we weren't -- so
9 if we had it -- and so the reason we included that language is
10 because we know that we do have a sense for the type of
11 information that's responsive to our --

12 **THE COURT:** What I was going to -- earlier I think you
13 said you don't have an objection to them redacting, like, home
14 addresses and -- I forgot what it -- like driver's license
15 numbers and things like that. Is that --

16 **MR. AYERS:** No. No, Your Honor.

17 **THE COURT:** Okay.

18 **MR. CHAPUT:** Isaac Chaput, Your Honor, for the Meta
19 defendants.

20 Just on the piece that was raised by the state attorneys
21 general, Meta is happy to confer further with the state AGs
22 regarding ages or years of birth; we do understand that that
23 could potentially be relevant to their claims.

24 In addition to the items that Your Honor just mentioned
25 that I think are appropriate for redaction, that could include

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1 also e-mail addresses and phone numbers of non-plaintiffs to
2 the litigation.

3 **THE COURT:** Okay. Don't be surprised if in my order I
4 order you all to meet and confer further on this to put some
5 more definition of what everybody agrees can be redacted and
6 see if we can narrow the dispute even more before you come
7 back. Okay.

8 **MS. FITERMAN:** Your Honor, there were two other issues
9 within redactions.

10 **THE COURT:** Before we get to that, Madam Reporter, do
11 you need a break?

12 (The official reporter responds.)

13 **THE COURT:** Why don't we take a break now since we're
14 switching issues.

15 (Recess taken at 2:22 p.m.)

16 (Proceedings resumed at 2:36 p.m.)

17 **THE CLERK:** Please remain seated and come to order.
18 Court is back in session, the Honorable Peter H. Kang
19 presiding.

20 **THE COURT:** Moving on. Is there anything else on
21 redactions that we really need to talk about, in the interest
22 of time?

23 **MR. AYERS:** Yes, Your Honor. There's at least one
24 other item. I mean, in D --

25 **THE COURT:** Sure.

1 **MR. AYERS:** -- you reference that the one difference
2 of language in D. -- there's one significant difference here
3 that the Court did not mention is that there's a difference of
4 opinion of whether redact- -- prohibited -- that are required
5 under applicable law versus permitted under applicable law.

6 Obviously, there are numerous -- there are numerous laws
7 that potentially permit, you know, redaction, but the question
8 is whether there are actually like laws that require there be
9 redactions. And plaintiffs are -- plaintiffs are willing to
10 obviously allow for redactions of information that are required
11 to be redacted under various U.S. laws for protective orders,
12 but not that may be permitted too.

13 There's obviously the protective order in place that
14 protects various information that would adequately protect that
15 information. But if certain information is required, then
16 plaintiffs would allow that and agree to that.

17 **MS. FITERMAN:** Amy Fiterman on behalf of defendants,
18 Your Honor.

19 Defendants' only position here is that not every specific
20 law that, in order to comply with it, is going to, you know, in
21 black letter is going to say you must redact some information.
22 It's just -- it's an allowance for that if there is certain
23 information that defendants feel they need to redact, on
24 privacy or other grounds, that they be permitted.

25 **MR. AYERS:** And I think privacy -- PII and other

1 privacy-permitted redactions are specified under categ- --
2 subsection (a), which obviously spells out the various -- four
3 different categories of information that may be redacted.

4 And so I think the scope of the redactions is significant
5 here of any redactions that may be permitted is just -- is
6 inappropriate.

7 **THE COURT:** Okay. I'll take that under advisement.

8 Okay. Why the difference between law and U.S. law? Is
9 that substantive?

10 **MS. FITERMAN:** I think, Your Honor, just from the
11 defendants' perspective, just for consistency across, you know,
12 wherever, however these documents are being produced and the
13 laws under which the various defendants are operating, we're
14 providing for that allowance.

15 **MR. AYERS:** We believe that foreign laws shouldn't be
16 dictating what redactions should be made to documents in the
17 United States litigation.

18 **THE COURT:** I tend to agree with that.

19 All right. So you'll see my final ruling on that.

20 And then --

21 **MS. FITERMAN:** Your Honor, I apologize. I don't mean
22 to interrupt you.

23 Just one additional matter under G, and it's the last
24 issue on redactions.

25 You'll see the language that starts, "Where possible, any

1 occurrences," and down to "regarding auto date." And it's
2 regarding to replacement of certain information in redacted
3 documents.

4 **THE COURT:** Yeah.

5 **MS. FITERMAN:** The defendants' position just simply is
6 on this that this is logistically extremely difficult, if not
7 possible in certain situations. And defendants shared that
8 position and perspective with the plaintiffs during the meet
9 and confers.

10 But this is just overly burdensome language that, in some
11 instances, either is going to be logistically, you know, near
12 impossible or is going to slow an entire process down, and
13 gives us -- and there's very little benefit to it.

14 **MR. AYERS:** Your Honor, Chris Ayers on behalf of the
15 plaintiffs.

16 This language here is well-accepted and -- across the
17 country in various ESI protocols. The problem here is when
18 you're redacting information, you're going into that document
19 and you're redacting it. And so if there's auto- -- autofill
20 date, time, et cetera, you're changing the metadata and you're
21 changing the accuracy of the underlying information.

22 And so it fundamentally changes the substantive
23 information, particularly when documents are being generated,
24 prepared, and being used. Given that the scope of this
25 litigation is over many years, you know, going in and having --

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1 having that information changed and not preserved is a problem.

2 And so what this does and what is accepted and -- in ESI
3 protocols that are used across the country is it provides for
4 the fact that this issue is obviously addressed, and so
5 you're -- so what the receiving party understands, the date and
6 the time and when this -- of the original document and not have
7 that information changed and manipulated due to the redaction
8 process.

9 **THE COURT:** My admittedly limited past experience and
10 understanding is if the documents are exported and loaded onto
11 Relativity, that the auto-changing of dates and all that, that
12 doesn't -- is not disabled but it -- that can't happen because
13 you're basically pulling the document over onto the Relativity
14 platform, which is intended to preserve the metadata as it
15 existed in the original document.

16 Is that -- is my understanding of how Relativity or
17 similar platforms work?

18 **MS. FITERMAN:** Your Honor, I'm not going to be able to
19 get to that level of detail with you in Relativity; and you may
20 be smarter on that than I am, as you are many, many other
21 things. So I'm going to defer on that, unless somebody else
22 amongst the defense teams knows that.

23 Our position is that this level of work, once we've pulled
24 it over, slows redaction workflows, and that's what we're
25 trying to avoid. So whether it can or can't be done, we're not

1 saying that it absolutely can't be done. We're saying that it
2 makes it logistically difficult and slows process, which really
3 isn't necessary.

4 In addition to the fact that we will -- we've made
5 representations that we will make every effort to leave e-mail
6 headers unredacted where we can and where header information
7 isn't disclosing privileged information.

8 So the defendants are going to be making every attempt not
9 to redact information that it -- isn't absolutely necessary to
10 be redacted. And in addition, there's language in this section
11 too that gets into issues related to assertion of privilege in
12 a privilege log. And we have a separate privilege log that we
13 are negotiating with the plaintiffs, and defendants would
14 assert that this language in the ESI protocol is not necessary.

15 **MR. BLAVIN:** Thank you, Your Honor. Jonathan Blavin
16 on behalf of Snap.

17 And I apologize for going back to an issue, but I just
18 want to briefly put this on the record.

19 At least for Snap, there may be certain custodians who are
20 based in Europe and there may be obligations under European
21 law, including the GDPR, with respect to redactions of personal
22 information before that data is transmitted to the United
23 States. So I just wanted to make that clear so Your Honor is
24 aware of that when considering these issues.

25 **MR. AYERS:** If I may, not having to go back, but the

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1 idea that European laws, even the GDPR, would be applicable in
2 the United States is just completely inaccurate. Numerous
3 courts that have dealt with this issue have rejected that
4 approach. They have held that GDPR does not apply in U.S.
5 litigation.

6 Even if it did, there's a litigation exception within the
7 GDPR for allowing the disclosure of this information. It's
8 been tried -- this idea of redactions due to GDPR and U.S.
9 litigation has been litigated numerous times. I've litigated
10 it numerous times. And the Courts have routinely uniformly
11 rejected this idea that foreign laws be applicable in the
12 United States, even GDPR.

13 **THE COURT:** Okay. I understand the issue.

14 Since we're talking about G, the defendants want to --
15 instead of the phrase "or other user-entered data which are
16 visible," blah-blah-blah, want to make that "marks made and
17 track changes."

18 Am I reading that correctly? That dispute correctly?

19 **MS. FITERMAN:** Yes.

20 **THE COURT:** What's the -- is there really a
21 substantive dispute there?

22 **MR. AYERS:** I don't think there should be. It's just
23 the fact that this information, when it's being processed,
24 should be visible and made sure that none of -- no hidden
25 content remains hidden during the processing of those

1 documents.

2 **MS. FITERMAN:** I think the defendants were just trying
3 to be more clear. We just added more things in that the
4 plaintiffs had omitted.

5 **THE COURT:** Okay. Well, I actually think there's
6 probably a meeting of the minds there. Okay. So you'll see my
7 final decision on that when I issue the order.

8 We're finally done with redactions.

9 **MR. AYERS:** Yes, Your Honor.

10 **THE COURT:** My question on Issue 5 was: What is the
11 import of the proposed defendant footnote?

12 **MS. FITERMAN:** Let me get there, Your Honor. I
13 apologize.

14 I don't know that that's in dispute, Your Honor. I think
15 we have that footnote but -- and plaintiffs did not. But I
16 think there was just a clarification. I don't have Sections 6
17 to 11 right in front of me. I think the real dispute here was
18 over 12.

19 **MR. AYERS:** That footnote is very much in dispute.
20 It's -- we do not include that language. There's no reason --
21 Your Honor, there's no reason to exclude databases and other
22 structured data from the requirements of Section 6 through 11.

23 Obviously, defendants should be required to identify their
24 databases and other structured data sources.

25 **THE COURT:** So my -- I read that to mean the phrase

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1 "noncustodial" modifies the rest of that sentence. Is that an
2 incorrect reading?

3 So in other words, all these -- this is -- does not apply
4 to noncustodial data like databases; in other words, all of
5 that is supposed to be examples of noncustodial data.

6 Is that a misreading of the footnote?

7 **MS. FITERMAN:** No.

8 **THE COURT:** So if it's noncustodial data -- well, what
9 do you mean by noncustodial data?

10 **MS. FITERMAN:** Noncustodial data would be data that is
11 in, for example, a database that isn't owned by an individual
12 employee. So when we typically think of custodial data, we
13 think of data that's either in G Suite or documents that have
14 been created by individuals.

15 Noncustodial data would be, obviously, structured data and
16 databases and other -- again, we've got four different
17 defendants; they maintain their data in lots of different ways.
18 And so the term "custodial/noncustodial" can get difficult as
19 we navigate through different systems and how they're
20 maintained. But the traditional definition of noncustodial
21 data is what we're using here.

22 **MR. AYERS:** Your Honor, this exception in this
23 footnote is sweeping, and it essentially guts the entire ESI
24 protocol in its application across to the defendants. The
25 defendants have a host of noncustodial data sources, including

1 their databases, their proprietary -- their proprietary
2 platforms and systems.

3 And so all of those systems would be exempt from duties
4 to -- to disclose and identify those -- those data sources,
5 where it would be searched, exempt from the search
6 methodologies and validation procedures that, Your Honor, we
7 just went over.

8 And so significant, significant amounts of data that's
9 relevant and responsive to plaintiff -- to this litigation,
10 plaintiffs' request for production of documents are going to be
11 located in noncustodial sources. I've never seen a footnote
12 like in this any U.S. -- in any ESI protocol that's been
13 entered anywhere in the country.

14 I've never seen it before. It's never been proposed
15 because it is fundamentally overly burden- -- it's prejudicial
16 to the opposing party here in this -- who just exempted from
17 disclosure, exempted from the search methodologies and
18 disclosure of how you're going to obtain this information.

19 What we're dealing with here is some of the most
20 technologically advanced parties in the world; right?

21 They invent the software and the systems that are used
22 through a variety of other corporations and stuff throughout
23 the world. They are the most sophisticated. They use their
24 own proprietary systems and softwares, and this would give
25 them, again, the opportunity to keep those systems behind a

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1 wall that the plaintiffs would not know about.

2 And how the information from them is gathered and is
3 produced would not be pursuant to this ESI protocol that we're
4 all entering into in good faith.

5 So essentially it would gut this whole thing. And so
6 that's why the plaintiffs propose language that would make sure
7 that the systems are disclosed, and that the parties
8 disclose -- discuss what information is contained this them and
9 how that information would be produced.

10 Significantly, the language in plaintiffs' protocol that
11 says that they'll meet and confer in good faith and attempt to
12 reach agreement on the data to be produced and the form and
13 scope of the production, that's language that Meta -- that Meta
14 had agreed to in the privacy litigation MDL, 2843, and that's
15 ECF 416.

16 So this idea that they shouldn't be able to -- required to
17 meet and confer about it, disclose this information, and confer
18 with the parties is just not what is done in major litigations
19 throughout this country, or any litigation that I'm aware of.

20 **MS. FITERMAN:** Your Honor, if I might. I apologize.

21 **THE COURT:** Go ahead.

22 **MS. FITERMAN:** That's just not correct. And Mr. Ayers
23 is misrepresenting the defendants' positions.

24 The whole point is that to the extent -- we've spent a
25 year actually going through extensive meet and confers with the

1 plaintiffs with regard to where data resides and what kind of
2 information it houses, and have identified, you know --
3 defendants have identified certain nonstructured data.

4 We're talking about user data here. That's, you know,
5 potentially plaintiff user accounts that we're talking about.
6 All we're saying is that we've got a separate section here
7 where we're talking about -- about structured data, and that
8 we're identifying structured data separately from, you know,
9 separately from custodial data.

10 It does not in any way mean that the defendants believe
11 that they do not have an obligation, if certain information is
12 requested and that information is housed within certain
13 structured data, that that isn't disclosed and then negotiated
14 as to how that can be -- how that can be produced. So that is
15 not what the -- this particular footnote is suggesting here.
16 It's just treating it in a separate location.

17 **THE COURT:** All right. Explain to me how data that is
18 accessible by, say, your client, employees of your client is
19 noncustodial to your client.

20 **MS. FITERMAN:** Yeah, and that's the terminology issue,
21 maybe, that we're struggling with, Your Honor.

22 So it's custodial to the client, but oftentimes, when we
23 discuss, quote/unquote, custodial data, we're talking about
24 data that resides with a particular employee.

25 Oftentimes, when we talk about agreeing to search terms

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1 and custodians, we're talking about employees who have certain
2 data and then we reach agreement on who those custodians will
3 be. So that is the traditional way that we talk about
4 custodial and noncustodial data.

5 Oftentimes, there's gray space. And the defendants are
6 certainly willing to discuss that, but this is in the most
7 traditional sense of what that looks like. And for some
8 defendants, that will be more important to other defendants --
9 depending on how their data is stored, and that's going to look
10 very different across defendants.

11 **THE COURT:** Okay. I'm not inclined to include your
12 footnote because if it's data accessible and under the control
13 of your client, it's potentially within the scope of discovery,
14 in which case we can't exempt it under some presumably
15 future-to-be-debated definition of what noncustodial means.

16 **MS. FITERMAN:** We weren't proposing to exempt it
17 entirely from the protocol, Your Honor.

18 **THE COURT:** 6 through 11 that's --

19 **MS. FITERMAN:** We were proposing to treat it
20 separately in Section 12.

21 **THE COURT:** Let me put it this way: To the extent
22 there is something that the defendants believe is truly
23 noncustodial data that needs to be dealt with separately, I
24 certainly -- I'll direct the parties to meet and confer on that
25 if somehow it doesn't fit within the confines of the ESI

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1 protocol or what you otherwise informally agreed to.

2 All right?

3 I don't think an exemption like this -- essentially, it
4 sounds like it's inviting future disputes over what's being
5 exempted or not. I don't feel comfortable carving out an
6 exemption like that.

7 All right. Let's go to e-mail threading, Issue 6.

8 My initial take on the proposals is -- Mr. Ayers, tell me
9 if I'm wrong -- the plaintiffs are trying to define essentially
10 what constitutes an e-mail thread by defining who the people
11 are on it and the same subject matter and all that.

12 Is that what the intent of your subs little i through
13 little Roman iv are?

14 **MR. AYERS:** Yes. It defines what an appropriate
15 e-mail thread should be in the sense that these technologies,
16 as much as it's pushed that they're well accepted and uniform,
17 they're not.

18 Numerous courts have not permitted e-mail threading. Have
19 allowed e-mail threading during the review process, but every
20 responsive e-mail that is otherwise part of it should be
21 produced separately. And that's generally what is well
22 accepted and done is that they can do it during the review
23 process, but then all the embedded e-mails within the chain are
24 then produced.

25 We are willing -- the plaintiffs are willing to agree to

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1 allow the defendants to use e-mail threading, to produce the
2 complete e-mail thread and not having to produce those other
3 e-mails that are in the chain; however, there needs to be real
4 safeguards within that that are going to be applied, stuff that
5 can be done through their software if it's done appropriately.

6 And that's making sure that, you know, there are no
7 frolicking detours within the e-mail chain itself -- right? --
8 with people being added and subtracted within the chain, that
9 we lose those lesser-inclusive e-mails, that if there is a
10 lesser e-mail where someone -- oftentimes, you'll see this when
11 you're doing collaborative e-mails, where people will write
12 "Response: see below," and then it will have various responses
13 and edit the below e-mail.

14 So what this does is plaintiffs make various categories of
15 information that should stay the same. So the people that are
16 on the e-mail chain have to be the same. So the "to," "from,"
17 "BCC," all the people, depending on where they are within
18 the -- they can change where they fit within the "BCC" or "CC"
19 or "from" and "to." But all those people need to be the same.
20 There's needs to be unity in that. The e-mail chain, there
21 can't be a deviation or alteration of the actual bodies or
22 texts of those -- of the e-mails.

23 And then with respect to attachments, that there needs to
24 be -- then with respect to where there is an attachment
25 introduced, that that e-mail be separately produced with that

1 attachment to maintain that family relationship so you
2 understand which e-mail within that chain was -- the e-mail
3 was -- the attachment was attached to. That obviously is very
4 critically important with respect to foundation during
5 deposition, at trial, all this stuff, to understand when an
6 attachment, and who attached a certain document, and things
7 like, and those are done.

8 These are all issues that were discussed during the meet
9 and confer that defendants did not oppose. It's all that
10 during the meet and confer that they did not oppose and they
11 did not indicate they could not do.

12 In fact, when there was something that they said they
13 couldn't do, we removed that. But yet the defendants still
14 oppose including this language that really creates the
15 safeguards and guardrails on the use of this technology which
16 is not well accepted and necessarily uniform to make sure that
17 we are not losing substantive information that's responsive to
18 our information, to our -- to this litigation, to our document
19 requests.

20 **THE COURT:** Well, the answer to my question is: Yes,
21 this is an attempt to define what a thread is.

22 **MR. AYERS:** Yes.

23 **THE COURT:** What's wrong with trying to define what a
24 thread is?

25 **MS. FITERMAN:** Your Honor, Amy Fiterman on behalf of

1 defendants.

2 Your Honor, the commercial software that is used to do
3 e-mail threading is very well known, well accepted. And the
4 vendors that are being used by both the plaintiffs and the
5 defendants understand what the capability of those threading
6 tools are.

7 To the extent -- what plaintiffs have put here is not
8 consistent with what the commercially available software can
9 do. And so rather than go through a whole litany of things in
10 plaintiffs' definition that doesn't necessarily comport with
11 how the software works, defendants are suggesting simply that
12 we use very clear language that say we'll do the threading.

13 And that, if at some point, if they want to request
14 something, that we may produce a less-inclusive copy. But to
15 use the ESI protocol to define what the tools can do from
16 defendants' perspective is improper. Again, the tools are the
17 tools. And if we're willing to disclose what tools we're using
18 to do the e-mail threading and nobody has any questions about
19 what those capabilities are, this should be very
20 straightforward.

21 Different defendants may be using different threading
22 tools, and so we don't want to have one definition that isn't
23 exact to any of the tools. So better to use this language that
24 allows for threading, and then the tools are going to do what
25 they do.

1 The language that the defendants have proposed here
2 actually comes from the model ESI order in the Western District
3 of Washington, and so we thought that it was a very appropriate
4 way to address this issue, as other courts have done.

5 **THE COURT:** Are you -- I just want to make the record
6 clear.

7 Are you telling me that you've investigated and you're
8 representing to the Court that the tools are incapable of doing
9 threading according to these parameters?

10 **MS. FITERMAN:** Not -- I think what the -- no. The
11 defendants are saying that the language is inaccurate. And so
12 rather than nitpick over --

13 **THE COURT:** Inaccurate in what way?

14 **MS. FITERMAN:** In various ways. And it's going to
15 depend on which tool it is.

16 So, for example, Mr. Ayers was talking about attachments.
17 I think, all of the tools are going to, if there's a
18 separate and unique attachment, that's -- you know, that's
19 going to be separate.

20 So, you know, if we want to get into specifics about every
21 last little piece of this that isn't allowed through the --

22 **THE COURT:** It's only four parameters; right?

23 So it sounds like there's agreement that if, in an e-mail
24 thread, one of the e-mails in the thread has an attachment,
25 your tools treat that as a separate thread and produce it

1 separately --

2 MS. FITERMAN: Correct.

3 THE COURT: -- which is what plaintiffs want; right?
4 So why oppose that?

5 MS. FITERMAN: Well, because -- well, as to
6 little (i), Your Honor, it says, "All participants in any
7 role," so -- you can read that.

8 With regard to little (i), most of the commercial software
9 that we use is using conservative logic and they are preserving
10 different branches of a thread with different attachments and
11 different groups of recipients. So -- but potentially it may
12 suppress lesser included e-mails if participants are added to a
13 chain as long as all recipients are reflected.

14 So this gets really technical, Your Honor. And we've
15 addressed all of these issues with the plaintiffs. And our
16 proposal is: If you're okay with the threading tool that we're
17 using and we provide you with the parameters that those tools
18 have, that should be adequate, that we shouldn't list this out
19 specifically because we think that the nuance of this is lost
20 in some of this language.

21 THE COURT: Well --

22 MS. FITERMAN: And we're not using all of the same --
23 we're not -- the defendants are not all using the same
24 threading tools.

25 THE COURT: Regardless of the tool, let's look at

1 little Roman ii.

2 I mean, if the subject lines changes in the thread, you're
3 telling me all the tools would treat that differently?

4 I mean, I would assume any of the tools would if -- once a
5 subject lines changes, would decide that that's no longer the
6 same thread.

7 **MS. FITERMAN:** Well, Your Honor, it's going to depend
8 on the header and recipient information, body content.
9 Oftentimes, it's the content that the tools are using. So --
10 as opposed to the -- as opposed to the subject lines.

11 So, no, that isn't -- that isn't clear. And we have been
12 very clear with the plaintiffs as to what tools the defendants
13 are using and what those tools can do.

14 So it's just a simple question of if the tool can't do it
15 or the tool does it in a different way, we don't want language
16 in the ESI protocol that isn't accurate and doesn't allow us to
17 use a well-respected tool that's industry standard.

18 We're happy to go back and -- I have a strong feeling,
19 Your Honor, that we're going to be going back and meeting and
20 conferring on a lot of topics, as you've suggested. And so
21 we're willing, Your Honor, if there is a way to find compromise
22 in this, if it's important that we have all of the specifics
23 within the protocol, to make sure that it's compliant with what
24 all of the tools do, and doesn't leave room for an allegation
25 that we've somehow violated the protocol by using the threading

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1 tool we're using, defendants are more than happy to go back and
2 discuss this with plaintiffs.

3 **THE COURT:** Have they disclosed all the tools they're
4 using --

5 **MR. AYERS:** No.

6 **THE COURT:** -- to plaintiffs?

7 **MR. AYERS:** No. No, the -- Your Honor, we have had
8 multiple meet and confers over this. They've had their
9 technical personnel on the call. They have not disclosed the
10 tool that they used for hyper-threading.

11 That said, we went over these four different categories.
12 Their technical personnel that were on the phone, that talked
13 extensively on this subject, did not oppose any of this and say
14 that any of these things are not possible. One -- and so if
15 I -- if I just -- if I just may, Your Honor.

16 You know, we're agreeing to this because we -- these are
17 the safeguards that are appropriate. If they want to -- they
18 are the most technologically advanced companies in the world.
19 If they can't use the software that's capable of making sure
20 that near duplicates and changes and alterations that are in
21 the chain to make sure -- they shouldn't be used. It shouldn't
22 be used.

23 And this is part of our point. If they can't guarantee
24 that we're not going to have -- that they're not going to
25 basically remove substantive responsive information from their

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1 production through the use of this e-mail threading tool, then
2 it shouldn't be used and that -- all of the embedded e-mails
3 should be produced in the first instance.

4 **THE COURT:** All right. So if it's been intuited
5 correctly, I'm going to order you, probably, to meet and confer
6 on this because it sounds to me like there is room to reach
7 agreement on the language to put in the safeguards that you
8 want. And if -- I would -- well, I order the plaintiffs to
9 certainly -- the defense to identify at least the commercial
10 tools that they're using for threading to plaintiffs so that
11 plaintiffs can do their own investigation as to what those
12 tools can and can't do, along those lines, and to cooperate on
13 that.

14 And when you do meet and confer on these issues, I
15 definitely want the technical people on the calls as well
16 because the techies know how these things works better than
17 lawyers. Okay?

18 **MS. FITERMAN:** Thank you, Your Honor.

19 And we did have the technical people on -- yeah.

20 **THE COURT:** In future, the -- going forward.

21 **MS. FITERMAN:** Okay. Understood.

22 **THE COURT:** All right.

23 All right. Issue 7, deduplication. So there appears to
24 be some agreement on using things like the MD5 hash and SHA
25 hash value.

1 I guess, the disputes are from what I can tell, Mr. Ayers,
2 you had proposed language that the defendants did not agree to;
3 is that -- am I reading kind of the way this worked out?

4 **MR. AYERS:** For the most part, yes. There are a
5 couple of deviations where the defendants had certain language
6 that the plaintiffs did not have either.

7 **THE COURT:** All right.

8 **MR. AYERS:** Such as -- we specified that there should
9 be the use of MD5 hash values or the SHA hash values. They
10 indicate that they should use industry standard technologies
11 and then they provide those as just mere examples.

12 And the problem with that is, is that there are a
13 multitude of hash algorithms out there that really don't
14 provide for the proper deduplication of exact duplicates.
15 They -- the values will ultimately use near -- get -- they will
16 remove near duplicates, close, but not -- not exact.

17 And these hash values, MD5 hash values and the SHA hash
18 values, are industry standard. They've been used. They're
19 routinely required to be used. And, in fact, defendants
20 indicated that they have -- with their technical personnel,
21 would not and didn't indicate that they would use anything
22 other than these technologies.

23 So we just specified that given that they're not using
24 anything else, that we specify that these are the technologies
25 that should be used because of those are the -- those are the

1 industry standard and nothing else really is.

2 **THE COURT:** What's the problem with that?

3 **MS. FITERMAN:** Just two small things, Your Honor.

4 One, when it comes to using a particular MD5 or SHA, there are
5 certain defendants that have custom systems where they may
6 deduplicate in other ways, and so as long as, you know -- and
7 any other defendant who wants to get up and speak to their own
8 specifics, I think the concern was, as long as that -- it's
9 compliant with industry standard, whether it's specifically MD5
10 or something else, as long as there's no dispute and we're
11 willing to, you know, address, you know, how it's being done,
12 if -- you know -- and so flexibility when it comes to four
13 different defendants who have different systems, we're just
14 trying to make --

15 **THE COURT:** Let me stop you right there.

16 Why don't you just confer with your codefendants right now
17 and see if anybody is planning to use something other than MD5
18 or SHA hash values, because if they're not, this is not an
19 issue.

20 **MR. CHAPUT:** Isaac Chaput on behalf of the Meta
21 defendants.

22 I want to be -- start off to make one thing perfectly
23 clear. Meta is not seeking to exclude near duplicates without
24 first conferring with plaintiffs. So if we're going near near
25 duplicates, we will confer.

1 We do, however, need some flexibility in terms of how we
2 go about identifying exact duplicates. And the industry
3 standard deduplication technology that we would use
4 incorporates a hash value, an MD5 or a SHA hash value, as one
5 aspect, but there are other layers that might be involved.

6 So, for example, bit by -- bit-for-bit identity is not
7 actually the industry standard. So to use an e-mail as an
8 example, e-mails might have different time stamps for the
9 sender and the recipient due just to how it was processed, and
10 so that would not get -- those would get processed as near
11 duplicates, but not exact duplicates if you went for
12 bit-for-bit identity.

13 And that's what plaintiffs are asking for. So they're
14 getting two copies of exactly the same e-mail even though they
15 are actually substantively exactly the same e-mail.

16 As another example, PDFs generate new nonidentical
17 binaries each time they're collected due to certain time stamps
18 being embedded in the binary even though, again, the content is
19 exactly the same.

20 And so the technology is looking at the actual content of
21 the document, along with certain reliable metadata to determine
22 whether there's actually an exact duplicate in any particular
23 circumstance. So it's a combination of content and metadata
24 and hash and -- so, again, it's -- there's just some
25 flexibility that's needed here so that we're not producing,

1 you know, five copies of the same PDF to plaintiffs that are,
2 in fact, substantively exactly the same.

3 **THE COURT:** What's the problem with that?

4 **MR. AYERS:** The problem for that is it provides a
5 whole lot of room for error. It provides a lot of room for --
6 and these files wouldn't be reviewed substantively so you'd be
7 omitting changes in the -- changes in the documents that
8 wouldn't get produced.

9 And Mr. Chaput's example -- nothing wrong with that.
10 There's nothing wrong with it. If there -- if the bit-for-bit
11 somehow drew in some exact duplicates by error.

12 But what about the inverse -- which is the more likely
13 scenario, which has happened, from my experience, in numer- --
14 when you're not using the industry standard, which is -- are
15 these technologies, and doing a bit-for-bit -- doing a
16 bit-for-bit comparison to make sure that they're exact is that
17 what you're doing is you're actually omitting slight variations
18 of documents, the different things that are -- whether there's
19 handwriting -- whether there's handwriting on a handwritten
20 draft or something, there's comments.

21 The idea is, is that, yes, Mr. Chaput suggests that
22 defendants, in their proposal, they would meet and confer over
23 near duplicates, but if they're not using the right technology,
24 they won't know that these are near duplicates that are
25 being -- because this is automated.

1 What they're suggesting is they know of a near duplicate.
2 But if they're not using the right technology, then -- then
3 we're not going to -- then we won't know. They won't know. We
4 won't know.

5 And if they do end up producing another -- an extra
6 document, then so be it. I mean, it's not the -- it's not the
7 worst thing in the world for them to produce two of the same
8 document rather than it's a bigger -- it's a bigger issue to
9 omit responsive relevant information, alternatively -- that are
10 near duplicates being omitted and excepted from the production.

11 There is a issue --

12 **THE COURT:** Let me stop you there.

13 Mr. Chaput, it slows -- it speeds up your production if
14 you just use the hash values and then produce -- doesn't it? --
15 instead of doing the extra layer that -- of content review that
16 you're talking about.

17 **MR. CHAPUT:** Well, so, the -- the deduplication
18 happens before review. And so the issue is, if we're pulling
19 in these functionally exact duplicates, both copies are going
20 to end up getting reviewed. And so that's where the burden
21 comes in, in addition to storage costs, processing costs.

22 As an example of how conservative this software is, Meta
23 has a work chat function. And those work chats, when you
24 collect them from two different custodians, even though they're
25 substantively the same because it's a thread between two

1 different people, those are picked up as near duplicates and
2 not exact duplicates.

3 We think it would be reasonable and sensible for us to
4 agree that we only produce one of those since they're
5 substantively identical. But that's the sort of thing that
6 we're willing to meet and confer with plaintiffs about
7 because -- because the system, again, is processing that
8 example as a near duplicate instead of an exact.

9 **THE COURT:** Have you disclosed to plaintiffs what tool
10 you're using?

11 **MR. CHAPUT:** I don't believe we've disclosed the
12 specific tool, no, Your Honor.

13 **THE COURT:** Okay. Well, I order you to disclose -- I
14 mean, to have a substantive discussion about the
15 capabilities -- because there may not be a dispute here if he
16 knows what tool you're using and what's it capable of doing.

17 You should have more discussions along those lines to
18 share that kind of information because...

19 Anyway -- so you put the plaintiffs in the position they
20 don't know the capability of the tool. They're relying on your
21 description of what it can and can't do. That's the problem
22 here; right? And so I'm trying to see if we can reach
23 agreement but there's an information void on that side of this.

24 **MR. CHAPUT:** Thank you, Your Honor. We're happy to
25 confer further on this.

1 **MR. AYERS:** Your Honor, there's just one other piece
2 to this deduplication that I just want to raise to your
3 attention -- it was touched on Mr. Chaput -- is that e-mails --

4 **THE COURT:** Yeah.

5 **MR. AYERS:** The hash values, the algorithm, the hash
6 value algorithms do not work over e-mail. They just
7 fundamentally -- just over e-mail, it's a different methodology
8 that needs to be used. And this is methodology -- something
9 that defendants omit from their proposed -- proposed language
10 is that to properly deduplicate e-mail, you need to look at the
11 actual data fields.

12 You need to look at the from, to, CC, BCC, subject, date
13 sent, time sent, body, the hash values of all of the
14 attachments. These are all things that, when I spoke to the
15 technical personnel on the call, they indicated they're -- they
16 can do, their software can do to do that in a concatenated
17 analysis.

18 But they still won't agree to it, even though they can do
19 it. And this is critical, because when it comes to e-mail, the
20 hash values just don't work and so you will, without any
21 necessarily intent, omit near duplicates, omit things -- BCC
22 and things like that because it just fundamentally doesn't
23 work. And that is well accepted that it doesn't work on
24 e-mails. So that's why in ESI protocol after ESI protocol
25 that's entered in- -- across the country, they include the

1 specifications of what needs to be included for e-mail.

2 **THE COURT:** Okay. Anything further on deduplication?

3 (No response.)

4 **THE COURT:** All right. Let's move on to system files.

5 It looks like the parties agree on almost all the language
6 except the plaintiffs' phrase, quote, or are not themselves
7 responsive or contain responsive data, blah-blah-blah, up to
8 "user data."

9 Was it -- did I compare visually the two proposals
10 correctly?

11 **MS. FITERMAN:** That's correct, Your Honor.

12 **MR. AYERS:** Yes, Your Honor.

13 **THE COURT:** Okay. So, Mr. Ayers, why is that phrase
14 necessary?

15 **MR. AYERS:** Sure. So to get to -- just to start off
16 with, with respect to system files, these are -- these are
17 obviously -- most -- they should be -- these are
18 non-responsive, irrelevant system files that kind of --

19 **THE COURT:** I know what system files are.

20 **MR. AYERS:** Okay. And so the De-NIST is the -- the
21 De-NIST list is really the standard. And that's generally all
22 that's generally required. The defendants here propose a whole
23 litany of other systems that are -- that can be substantive
24 relevant information.

25 So to accommodate -- to accommodate defendants' inclusion

1 of all this other stuff that is not industry standard, we
2 included a requirement that they themselves are not responsive
3 or contain responsive information so that -- so that we are
4 sure that, you know, because this information is going to be
5 automatically omitted from the review process.

6 And so if that's the case, we'll never know if they're
7 removing automatically substantive, relevant information. So
8 if they know that it's substantive and relevant, it shouldn't
9 be excluded through the system files.

10 So we're trying to do everything we can to be
11 accommodating and reach agreement to allow them to exclude
12 these additional types of files, but we need the assurances
13 that this stuff isn't going to be independently relevant and
14 responsive in this litigation.

15 We could just agree to do -- to do the -- the NIST hash
16 set list, which is the standard, and end it there; but we are
17 trying to accommodate the defendants.

18 **MS. FITERMAN:** Actually, Your Honor, I'm going defer
19 to Meta's counsel because this is a Meta-specific issue.

20 **THE COURT:** All right.

21 **MR. CHAPUT:** Isaac Chaput for Meta, Your Honor.

22 File type exclusions, as Your Honor is probably well
23 aware, commonly ordered as fair of ESI orders and protocols.
24 And the issue with plaintiffs' responsiveness language is that
25 in order to determine if something is responsive, we have to

1 review it which completely defeats the purpose of having the
2 file type extension exclusions in the first place. And so we
3 can't cull it from review based -- if there's this
4 responsiveness escape hatch that plaintiffs are asking for.

5 **THE COURT:** Do you have a response to that?

6 **MR. AYERS:** There's certain of these -- information
7 that potentially could be aggregate -- individual or aggregate
8 user data that could be responsive. If the defendants know or
9 have reason or have potential -- or have reason to know that
10 there's potentially relevant information in any of these files,
11 then they shouldn't be automatically excluded in that they
12 should be reviewed.

13 And so the idea is if they have an understanding that
14 there's certain of these things that would be potentially
15 relevant, then those should be omitted from this automatic and
16 they should be reviewed. And so it should be done with care.
17 If they do want to automatically exclude these things, then
18 plaintiffs are willing to allow them to do so if they exercise
19 reasonable care in how they apply this.

20 But just categorically to omit all of these files without
21 any consideration of whether they would include responsive or
22 relevant information is just inappropriate, and it hasn't been
23 done in any other litigation that Meta has been in -- that I
24 can see from their ESI protocols -- or otherwise across the
25 country. The De-NIST list is the set list.

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1 So we're willing to compromise with them, but if they
2 insist on this language being omitted, then we would have to
3 just -- then it should just be the standard NIST hash list set.

4 **THE COURT:** Mr. Chaput, what's the problem with having
5 Meta make a determination before review whether or not Meta
6 believes or has reason to believe that any of these -- or these
7 specific files that you come across might have or would
8 reasonably be expected to have responsive information?

9 **MR. CHAPUT:** The issue, Your Honor, is that these file
10 types almost always are system junk files that have zero
11 relevance.

12 **THE COURT:** Then you don't have a reasonable basis to
13 believe or suspect they even have responsive information in
14 them?

15 **MR. CHAPUT:** I agree, Your Honor. My concern is if
16 the ESI protocol suggests that there might be a reason to
17 believe, then we have an obligation to identify each and every
18 one of these types of junk files.

19 So I mean, candidly, Your Honor, what we might end up
20 doing with these types of files is producing them without
21 reviewing for relevance. And if plaintiffs really want
22 voluminous junk files, we can produce them, but it just has to
23 be with the understanding that we're not necessarily going to
24 be reviewing them for responsiveness.

25 **THE COURT:** Well -- okay. I understand your position.

1 I don't think anybody wants parties producing junk files that
2 are nothing but zeros and ones.

3 So I understand the positions. You'll see my order on it.

4 **MR. CHAPUT:** Thank you, Your Honor.

5 **THE COURT:** Issues 9 and 10 are resolved, and we're
6 finally done with the long march; correct?

7 **MR. CHAPUT:** We are. Thank you, Your Honor.

8 **MR. AYERS:** Thank you very much, Your Honor.

9 **THE COURT:** All right. Going back to the discovery
10 report.

11 This is more of a curiosity thing. Where do things stand
12 on the plaintiffs' fact sheet?

13 Are you nearing completion on this with Judge Kuhl?

14 **MS. HAZAM:** Your Honor, Lexi Hazam for plaintiffs.

15 **MS. PIERSON:** Good afternoon, Your Honor. Andrea
16 Pierson, Faegre Drinker, for the defendants.

17 **MS. HAZAM:** And I can advise, Your Honor, that, in
18 fact, the plaintiff fact sheet has now been submitted to both
19 Judge Kuhl and to Judge Gonzalez Rogers.

20 **THE COURT:** Great.

21 **MS. HAZAM:** So we're awaiting the Court's order on
22 that.

23 **THE COURT:** All right. And let's see.

24 Law enforcement sharing, who wants to talk about that?

25 **MR. HUYNH:** Thomas Huynh for the state AGs.

1 **MR. CHAPUT:** Isaac Chaput for the Meta defendants.

2 **THE COURT:** All right. So I'm going to read to you my
3 text order from December 12th, which says (as read):

4 "Preceding each DMC" -- and this is before the
5 previous DMC -- "the parties shall file a joint
6 status report which shall address, among others
7 things, discovery issues which the parties are still
8 meeting and conferring on..."

9 As of December 12th, you were still -- there were meet and
10 confers on this law enforcement sharing issue, but it was never
11 raised at the prior discovery management conference. This is
12 the first time I'm hearing of it.

13 And so I'm tempted to ask why, but really my directive is
14 to be complete in your reports to me on discovery issues that
15 are coming up. Okay?

16 **MR. CHAPUT:** Understood, Your Honor.

17 From Meta's perspective, it had been raised. We asked the
18 state AGs for authority, and we didn't receive any. And so
19 since it was not raised in the context of the last discovery
20 conference, we had a similar understanding to Your Honor.

21 **MR. HUYNH:** Briefly, Your Honor. Thomas Huynh for the
22 state AGs.

23 With regards to our position, we note that on 11/29/2023,
24 we raised it with defense counsel. So we were discussing it,
25 but there was a concern that it was not yet ripe yet for

1 raising it for the Court, which is why we didn't, but we
2 understand the area --

3 **THE COURT:** The order is very clear that issues you're
4 meeting and conferring on I want to know about. Right?

5 So I'm going to give you some guidance on this issue. I
6 know you have a dispute on it and -- somebody asked for a
7 briefing schedule. I think my standing order on discovery is
8 very clear on how to handle -- raise discovery disputes
9 formally with me. You submit the brief, and then I'll -- the
10 letter brief and I'll look at it, and then I'll set the
11 schedule for any further briefing or hearing after that.

12 But I will tell you, I've done some research on this
13 issue, along with my staff. I haven't seen a lot of good
14 authority allowing free sharing of documents that are otherwise
15 confidential under protective order with third parties who are
16 not parties to the Court. They're free to intervene and
17 they're free to come in and ask for permission, but the whole
18 purpose of a protective order is, in fact, to keep the
19 documents under the control of this Court or under its
20 protective order. All right?

21 So you've got authority that tells me I -- you know, if I
22 have to do otherwise, I'm willing to read it in the brief.
23 Okay?

24 **MR. HUYNH:** Thank you, Your Honor. Thomas Huynh for
25 the state attorneys general.

1 We would just briefly note that this came out, like, after
2 the discovery statement was submitted. But in *D.C. v. Meta*,
3 2023-CAB-6550, the D.C. court actually did enter a law
4 enforcement provision with respect to Meta Platforms. So we
5 will submit the brief and provide you with our authority, Your
6 Honor.

7 **THE COURT:** Provide me the authority, and I guarantee
8 you I'll read it and I'll read your letter briefs -- assuming
9 you can't come to an agreement otherwise on the issue, which
10 I'm assuming you can.

11 **MR. CHAPUT:** We're happy to confer further with the
12 state AGs. And if it's necessary, we will submit a letter
13 briefing following Your Honor's protocols.

14 **THE COURT:** Okay. Let's talk about the proposed --
15 and the discovery plan.

16 **MR. CHAPUT:** Thank you, Your Honor.

17 **MR. HUYNH:** Thank you, Your Honor.

18 **THE COURT:** Who is going to talk about those?

19 **MS. SIMONSEN:** Good afternoon, again, Your Honor.
20 Ashley Simonsen for the Meta defendants.

21 **MS. HAZAM:** Lexi Hazam for plaintiffs again. And
22 various of us will speak to the issues in here, so we'll wait
23 for Your Honor to specify where you'd like to begin.

24 **THE COURT:** Okay. Well, let's see. Well, you can
25 expect an order on the ESI protocol shortly after this hearing.

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1 I'm not going to hold myself to a particular date, but it won't
2 go too long.

3 And I'll wait for you to tell me you're going to give me a
4 privilege log protocol, a deposition protocol, a source code
5 order.

6 On bellwether, I -- you're meeting with Judge Gonzalez
7 Rogers tomorrow; correct?

8 **MS. HAZAM:** We are, Your Honor. And, in fact, we have
9 alerted her to our desire to discuss the matter with her in the
10 case management conference statement submitted by the parties,
11 both the process and the timing of a potential bellwether
12 order.

13 **THE COURT:** You should definitely raise it with her,
14 and I'm sure she'll talk about it with you tomorrow and give
15 you guidance on that.

16 It will affect discovery at some stage and you can come
17 back to me on that. But until she's given you guidance on
18 where to go with bellwethers and all that -- I know you're
19 talking about it with Judge Kuhl as well. I don't think
20 there's anything for me to do on bellwethers at this time; is
21 that --

22 **MS. HAZAM:** Understood, Your Honor.

23 **MS. SIMONSEN:** We agree, Your Honor.

24 **THE COURT:** Discovery plan.

25 So let's talk about the bigger issue first. Discovery

1 scheduling and cutoffs -- sorry, I made you all change.

2 So I know you've teed up the issue of prioritizing
3 causation in the personal injury -- for the personal injury
4 plaintiffs with Judge Gonzalez Rogers. I'm sure -- she may
5 give you guidance on that tomorrow, but she's going to decide
6 that issue at some point.

7 Until she decides that issue, the case is not prioritized
8 and the causation is not prioritized. So I'm going to set
9 schedules for discovery on that basis, that there's no
10 prioritization, but I have your proposal.

11 So if she does prioritize causation, if the contours of
12 that part of the case change, come back to me at the next DCM
13 or whatever the next succeeding DCM is after she makes that
14 decision to then prioritize, and then we'll revise or
15 reconsider the schedule and the dates. All right? But for
16 now, I'm going to set deadlines assuming no causation
17 prioritization, that we're just going forward.

18 So if I understand correctly -- and maybe I'll use the
19 chart. Looking at the side-by-side chart on page 15 which I
20 found very helpful.

21 **MS. HAZAM:** Your Honor, that chart is -- if there is
22 phasing --

23 **THE COURT:** Yeah, well, this is --

24 **MS. HAZAM:** -- or prioritization by --

25 **THE COURT:** Okay.

1 **MS. HAZAM:** It's the -- it starts on the bottom of
2 page 10. That is the parties' chart --

3 **THE COURT:** There you go.

4 **MS. HAZAM:** -- of their respective positions without
5 prioritization.

6 **THE COURT:** Right. Sorry. Wrong side-by-side chart.

7 Okay. First off, I think you do need to do initial
8 disclosures so I'm going to set a date for that. I don't think
9 this is the kind of case where -- I mean, the fact sheets are
10 going to replace, maybe all of it -- all the initial
11 disclosures, but there have to be initial disclosures.

12 The other deadlines I think you have already agreed to.

13 The bellwether order, again, I think that's something to
14 raise with Judge Gonzalez Rogers.

15 Conceptually, I am going to order a date for substantial
16 completion of production of documents. In the interim, I think
17 that's both useful and it's necessary to make sure people are
18 working towards a closing date.

19 So this is on plaintiffs -- think they can get this case
20 ready to go by spring of 2025? It's your burden of proof.

21 **MS. HAZAM:** I'm sorry, Your Honor. Excuse me.

22 Plaintiffs for what deadline?

23 **THE COURT:** I mean, according to you, everything is
24 done by March 2025; right?

25 **MS. HAZAM:** Yes. Yes. Absolutely.

1 **THE COURT:** And so you want to -- presumably, you'll
2 be going to trial sometime in early 2025.

3 **MS. HAZAM:** Exactly. Well, not -- early might be an
4 exaggeration, given --

5 **THE COURT:** Q2 or Q3. I mean, sometime in, like, mid-
6 to --

7 **MS. HAZAM:** Exactly.

8 **THE COURT:** Mid-2025, depending on --

9 **MS. HAZAM:** Exactly, Your Honor.

10 **THE COURT:** -- Judge Gonzalez Rogers's availability.
11 So you're -- but are you ready -- you're representing here
12 you're ready to, with the party with the burden of proof, to
13 get your case together and get it ready under that schedule?

14 **MS. HAZAM:** We absolutely are, Your Honor.

15 **THE COURT:** All the plaintiffs are? State AGs?

16 **MR. HUYNH:** Thomas Huynh for the state AGs.

17 Yes, Your Honor.

18 **THE COURT:** All right. I'll give you one shot to tell
19 me why you need two years of fact discovery.

20 **MS. SIMONSEN:** Absolutely, Your Honor.

21 So we are proposing a fact discovery cutoff of February
22 2026, and that's in light of -- we've already seen extensive
23 discovery served on the defendants by the plaintiffs, including
24 over 600 requests for production served around the Christmas
25 holidays.

1 And I think it's notable that the plaintiffs, in their
2 discovery plan sections, state that that is just early
3 discovery that they consider to be circumscribed to kickstart
4 efficient discovery. So that is -- the inference from that is
5 that there is a great deal of additional discovery coming.

6 And although it may be the case that ultimately Your Honor
7 may agree with defendants in terms of objections to some of
8 that discovery, it will, of course, take time to sort those
9 objections out with the volume of discovery that these
10 plaintiffs are serving.

11 And I think, Your Honor, the unreasonableness of their
12 proposal is revealed by their proposed case schedule in the
13 event that general causation staging is ordered. Under that
14 proposed schedule, plaintiffs' proposed scheduled, fact
15 discovery would close in June of 2025, which is around
16 seven months later than under their primary proposal. But
17 defendants' general causation staging proposal merely involves
18 moving earlier in time defendants' challenges to plaintiffs'
19 experts on one discrete issue. It does not change the scope or
20 sequencing of discovery at all.

21 And plaintiffs' request for a discovery cutoff under that
22 plan of June 2025, while still nine months too early --
23 defendants would submit -- is an implicit acknowledgement that
24 more than 10 months is going to be needed to complete fact
25 discovery in these cases.

1 The other point I think it's important to appreciate here,
2 understanding that no bellwether order has yet been entered, is
3 that there will be extensive discovery of the personal injury
4 and the school district plaintiffs that's not accounted for in
5 this discovery plan because the parties do agree that that will
6 flow from what Judge Gonzalez Rogers does with respect to
7 setting bellwether trial dates and selecting bellwethers for
8 discovery, workup, and trial.

9 And I think it's particularly important to highlight that
10 we don't have even a plaintiff fact sheet implementation order
11 entered in the MDL yet. There is one entered in the JCCP but,
12 based on the sequence of events that have to occur before
13 meaningful PFS data is received -- which is a prerequisite to
14 selecting plaintiffs for bellwether discovery, workup, and
15 trial -- we don't expect to receive meaningful PFS data in the
16 JCCP until June of 2025.

17 That's not to mention the defendant fact sheets, which are
18 going to require the production of very complex structured data
19 that the plaintiffs have requested. No defendant fact sheet
20 implementation order has even been entered the JCCP.

21 And, Your Honor, it would be surprising to me if we were
22 even done with plaintiff fact sheets and defendant fact sheets
23 in the JCCP, leaving aside the MDL, by the date that plaintiffs
24 are proposing for the close of all fact discovery in the MDL.

25 So I think -- the other point I think I would like to just

1 note is that the plaintiffs are proposing -- essentially, if
2 you take into account their proposals on limitations to
3 discovery, they're proposing -- assuming they take the maximum
4 hours of depositions that they are proposing, that would be 390
5 full days of depositions of the defendants.

6 If you assume that they are going to propose the same
7 number of plaintiffs for bellwether discovery workup that
8 they've proposed in the JCCP, and that each of those plaintiffs
9 has approximately five depositions associated with each of
10 them, that's another 330 days of plaintiff depositions; 720
11 days just of depositions and there are only 300 days left until
12 November 15th when they propose that all fact discovery
13 concludes.

14 So we would submit to Your Honor that it's simply not
15 practical, particularly given the types of discovery that the
16 plaintiffs have not only said that they are seeking but have
17 actually already started seeking. And again, although
18 defendants will, I expect, be objecting to much of that
19 discovery, those objections will take time to be resolved.

20 So for all of those reasons, Your Honor, two years is an
21 eminently reasonable period of time where we're talking about a
22 case of this complexity, four different defendant groups, five
23 different social media applications. We have three sets of
24 plaintiffs in this MDL who are suing the defendants, and we
25 also are, through these proceedings, coordinating with

1 discovery in the JCCP, where there is another two sets of
2 plaintiffs, personal injury and school district plaintiffs.

3 So for all of those reasons, Your Honor, I think two years
4 is an eminently reasonable amount of time to target for the
5 completion of discovery in these cases.

6 **MS. HAZAM:** Your Honor, if I may respond?

7 **THE COURT:** Yep, please respond.

8 **MS. HAZAM:** Lexie Hazam on behalf of plaintiffs.

9 You just heard quite a few assumptions laid out there by
10 defendants, I think, in a sort of parade of horribles scenario.
11 I don't think many, if any, of those assumptions are warranted.

12 I think that the schedule that plaintiffs have proposed is
13 both more efficient and faster in honoring both Courts'
14 expressed desire to get these cases to trial quickly in
15 compliance with Federal Rule 1.

16 I would note that the entire premise of defendants'
17 prioritization proposal was to supposedly be more efficient and
18 to get there faster, and, yet, our proposal, without that
19 prioritization, is well over a year faster.

20 I would also note that I think our discovery on the
21 defendants has been mischaracterized here. It is not in any
22 way unusually voluminous thus far. It is a good start on
23 discovery. About half or more of the requests actually specify
24 a specific document that we are either asking them to produce
25 by title or by Bates number, or we're asking them to produce

1 some associated documents.

2 I would note that with regard to bellwethers, we obviously
3 need to consult with Judge Gonzalez Rogers and gain her
4 guidance as to how she wants to set up that process. I don't
5 think any assumptions can be made about schedule or numbers,
6 but what I can say is that the PFS process should be well
7 underway in the JCCP in March, and that the plaintiffs were
8 invited by defendants to match the schedule of the JCCP, and
9 said yes, even though our order will be entered later. We
10 remain willing to do that.

11 So, essentially, I think our schedule is eminently doable.
12 It honors the public health urgency of this case and
13 the Court's expressed wishes, and I think defendants' is a
14 recipe for undue delay and multiplication of disputes.

15 **THE COURT:** All right.

16 So you'll get a written order on this, but -- on the
17 assumption that, again, that any discovery schedule I enter is
18 consistent with an overall case schedule that you get from
19 Judge Gonzalez Rogers. I mean, she could go, you know, a
20 fast-track route and set you to trial for November of this
21 year. Doubtful. But she could also set you for trial
22 January of 2026. I don't know -- right? -- and I'm not
23 predicting anything.

24 But I'm going to set a discovery schedule -- as I said at
25 the last DMC, I do want you to get the case prepared

1 regardless. And it's -- part of my job is to keep the trains
2 running; right?

3 So the schedule you're going to see from me is going to be
4 more consistent with the proposal the plaintiffs have made in
5 terms of timing and cutoffs. There may be some tweaks there,
6 but I think -- I'm willing to reconsider those both if
7 causation gets changed and prioritized, and, of course, if the
8 overall case schedule somehow doesn't fit with what I'm
9 ordering.

10 So, please, obviously come back with me -- come back to me
11 if there's a disconnect there.

12 **MS. SIMONSEN:** Thank you, Your Honor.

13 If I may, to the extent that Your Honor intends to enter a
14 schedule that is more consistent with plaintiffs' timeline, the
15 defendants would request a deadline for plaintiffs to serve all
16 written discovery within eight weeks of entry of the plan. In
17 order for us to have any possibility of meeting a deadline
18 anywhere close to what the plaintiffs have proposed for the
19 close of fact discovery, we will need to know the universe of
20 documents that they are requesting and information that they're
21 seeking through interrogatories and requests for admission as
22 soon as possible. It is going to be a huge amount of
23 coordination to pull all of those materials, and so we would
24 ask that you set that deadline.

25 **THE COURT:** They've already served RFPs, and I assume

1 they're going to serve another set of RFPs once they see some
2 more documents. I don't know what the timing of that is going
3 to --

4 **MS. HAZAM:** Yes, Your Honor, that is -- excuse me.
5 Lexi Hazam for plaintiffs.

6 That is typically how discovery works. You get some
7 documents and then you request more based on what you've seen.
8 So we won't even have defendants' documents in any significant
9 number within eight weeks from today. So we vehemently oppose
10 that proposal and believe that it would just lead to the
11 reopening of discovery in an inefficient matter.

12 **THE COURT:** Have you served interrogatories on the
13 defendants?

14 **MS. HAZAM:** We have not. We are being conservative
15 about that but intend to start doing so very shortly.

16 **THE COURT:** I don't think I'm going to set a hard
17 deadline. It behooves the plaintiffs to, certainly, not delay
18 serving other written discovery. You've already served
19 requests for production. It also behooves plaintiffs not to
20 delay serving, say, a second round of document requests, and
21 certainly going -- issuing third-party subpoenas.

22 And I assume, if I set the schedule and you say you're
23 going to be ready, that you're going to take the -- you know,
24 take the efforts to make sure you meet the deadlines that are
25 being set.

1 **MS. HAZAM:** Understood, Your Honor.

2 **MS. SIMONSEN:** Your Honor, I would ask at least for a
3 substantial completion of the service of written discovery.
4 You know, the plaintiffs themselves have acknowledged that
5 defendants Meta, TikTok, and Snap already made initial
6 productions of documents, which were part of months-long
7 inquiry by the attorneys general into the exact conduct by
8 defendants at issue in this case.

9 So they already have a huge volume of documents -- over
10 65,000 documents. So the notion that they're in a position to
11 need extensive additional discovery before they can determine
12 what they -- what additional discovery they need to take from
13 the defendants is a little surprising to hear.

14 We've, you know, heard from the JCCP plaintiffs that they
15 think that they could go to trial against Meta based on the
16 documents that they already have from us, and so I think
17 it's -- if the defendants are going to be constrained to such a
18 short period of time to complete discovery, there need to be
19 some limitations, not just the assumed exercise of good faith
20 on the part of plaintiffs in terms of when they need to serve
21 their discovery.

22 And we would submit also -- I don't know if Your Honor's
23 going to get to it -- limitations on discovery.

24 **THE COURT:** Not there yet.

25 **MS. HAZAM:** Your Honor, if I may, the documents

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1 produced to date are, of course, simply documents that the
2 defendants had produced in response to investigations, not by
3 the plaintiffs here before you today as individual and school
4 district plaintiffs, but moreover, they are very uneven in
5 their productions. There is a body of documents from Meta that
6 is in the 40,000s. There is one document from Google. There
7 are less than 1,000 documents from Snap.

8 We are going to be meeting with Your Honor on a regular
9 basis each month. We can check in on the status of document
10 requests, but we do not think we should be setting deadlines
11 for them now, in contravention to normal practice in MDLs and
12 the rules.

13 **THE COURT:** Again, unless there -- unless I see some
14 foot-dragging by plaintiffs in issuing their subsequent
15 discovery requests, I don't think I need to, at this point, set
16 any hard deadlines for that. But, again, I caution plaintiffs,
17 you know, no dilly-dallying on getting your document requests
18 and other written discovery out. Okay?

19 **MS. HAZAM:** Understood, Your Honor.

20 **THE COURT:** All right.

21 **MS. SIMONSEN:** I think, Your Honor, it -- just one
22 additional point, maybe guidance that Judge Kuhl issued to the
23 plaintiffs in the JCCP when they were requesting a similarly
24 early trial date, which is: With such an early requested trial
25 date, which aligns generally with the fact discovery cutoff

1 these plaintiffs are requesting, that they are going to have to
2 be extremely targeted in their discovery.

3 And I must simply put on the record that with the
4 discovery cutoff of November of this year and the volume of
5 requests already served, we will, as defendants, need to
6 reserve the right to assert burden objections on the ground
7 that simply getting that many documents produced by that time
8 may simply not be feasible, and certainly is not proportional
9 to the needs of the case.

10 **THE COURT:** I assume you will assert all reasonable
11 good faith objections as to burden. And if it is truly
12 burdensome and if the objection is disputed, you can certainly
13 come back to me and explain why it's burdensome.

14 I don't know if anybody in the room has ever litigated in
15 the ITC, or in Marshall, Texas, but in those venues, we
16 finish -- those venues finish fact discovery in roughly
17 six months in highly complicated, technical cases. So I have
18 every confidence that the parties here can meet the deadline
19 here, which is more than six months.

20 **MS. JEFFCOTT:** Good afternoon, Your Honor. Emily
21 Jeffcott. I'm JCCP colead for the plaintiffs, and I did want
22 to correct one point.

23 Yesterday in a conference, we did disclose that we would
24 be willing to do a Meta-only trial as the first trial; however,
25 we did not state that we would be willing to do it on the

1 documents that have been produced thus far. Certainly,
2 additional discovery needs to move forward, the discovery
3 that's been issued, and going down the line. And we fully
4 support, obviously, the schedule that's been proposed by the
5 MDL plaintiffs in this case.

6 Thank you.

7 **THE COURT:** Thank you. Thank you.

8 Oh, and I should say, if the schedules I set somehow
9 conflict with the JCCP schedule that Judge Kuhl enters, you
10 have to let me know, too, because I want to be not only
11 sensitive to the interplay with the schedule that
12 Judge Gonzalez Rogers sets, but also the other case, because we
13 did all reach consensus. I think, everybody agrees, all the
14 parties agree should be coordinating across both, and I'm kind
15 of unofficially helping discovery that -- to the extent it
16 overlaps in the both cases too.

17 **MS. HAZAM:** Understood, Your Honor.

18 **MR. DRAKE:** Geoffrey Drake, King & Spalding, for the
19 TikTok defendants. If I could just add one additional point on
20 top of Ms. Simonsen.

21 The proposed schedule by the plaintiffs also includes just
22 a matter of a few months between the close of the fact
23 discovery period and the close of the expert discovery period
24 which overlaps, of course, from November 15th to March 1,
25 Thanksgiving, holidays, and the like.

1 I think, given the amount of expert workup that will be
2 necessary in this case, that seemed, in and of itself, overly
3 ambitious. And I just wanted to add that point perhaps on top
4 as Your Honor is adjudicating and determining what an
5 appropriate schedule would be on the plaintiffs' relative
6 track.

7 **THE COURT:** So with no phase-in, defendants wanted
8 five months between fact discovery and expert discovery -- and
9 expert discovery. And if I'm doing the math right, plaintiffs
10 proposed...

11 **MR. DRAKE:** Three and a half.

12 **THE COURT:** Three and a half months -- I'm sorry --
13 with some overlap is what you're saying -- right? -- because --
14 actually, three and a half months between the end of fact
15 discovery and the end of -- close of expert discovery. So the
16 difference is six weeks.

17 **MR. DRAKE:** Inclusive, of course, of the holidays.
18 It's always difficult to get the experts scheduled during that
19 time period. But I thought that was -- that might be an area
20 where some additional time could be helpful.

21 **THE COURT:** This raised a point that I was going to
22 make which is, you know, between experienced counsel like this,
23 I would have thought at least on that issue you could have
24 reached a compromise on six weeks' delta between the end of
25 fact discovery and expert discovery. But you've teed it up for

1 me, so I'm going to decide.

2 MR. DRAKE: Thank you.

3 THE COURT: I take your point about the holidays, so
4 thank you for that.

5 MR. DRAKE: Thank you.

6 MR. DONOHUE: Good afternoon, Matthew Donohue for the
7 Google defendants.

8 Just a couple of quick points. One is the Court -- if the
9 Court is inclined to enter a schedule similar to what
10 plaintiffs have proposed, we just would like to mention that we
11 think that there should be a more reasonable date set for the
12 initial disclosures. Plaintiffs, I believe they're proposing
13 tomorrow, which is obviously not reasonable at this point.

14 THE COURT: That can't happen.

15 MR. DONOHUE: So we think -- ideally, though, we think
16 there should be some meet and confer about the appropriate
17 scope of disclosures because even if plaintiffs don't think the
18 conversations we've had so far are sufficient that they don't
19 need any initial disclosures, I think it should at least narrow
20 the scope. So we would propose that the parties should meet
21 and confer about the timing and scope of initial disclosures.

22 MR. WARREN: Your Honor, may I respond?

23 THE COURT: Sure.

24 MR. WARREN: Previn Warren for the plaintiff.

25 Your Honor, we fully recognize that tomorrow is not a

1 workable deadline for defendants' initial disclosures. By the
2 same token, defendants have been on notice of this lawsuit for
3 a year.

4 The information we are looking for primarily relates to
5 the witnesses that would be ordinarily disclosed in a
6 litigation of this size -- really any civil litigation under
7 Rule 26(a)(1).

8 "Who knew what?" That is information we're entitled to,
9 and we're entitled to it very, very soon. I'm never opposed to
10 meeting and conferring with my friends on the other side. By
11 the same token, there isn't a whole lot to say at this
12 juncture. We just need a list of who knew what, and I think
13 we're entitled to get that promptly.

14 I did want to ask Your Honor for clarification on the
15 initial disclosures. My understanding is that the plaintiffs'
16 fact sheets that are going to be produced by the plaintiffs,
17 they're very robust in nature. They effectively give
18 defendants all of the information that would be covered by
19 Rule 26.

20 So I just wanted clarity that there isn't an expectation
21 we do something other than that. By contrast, I think it's
22 clear the defendants' fact sheet does not address who knew
23 what, nor does it address the insurance issue that's covered in
24 Rule 26(a)(1), and those would be the things that we'd be
25 asking for.

1 **THE COURT:** Certainly -- I mean, there probably won't
2 be dispute on this, but if plaintiffs provide the plaintiffs'
3 fact sheets and state, either through a pleading or on the
4 record, that those are also the initial disclosures.

5 **MR. WARREN:** That's no problem at all.

6 **THE COURT:** If the defendants have a dispute with
7 that, then they can raise it with you.

8 **MR. WARREN:** That's certainly no problem.

9 **MR. HUYNH:** Judge, if I may quickly.

10 **THE COURT:** Sure.

11 **MR. HUYNH:** Thomas Huynh for the state attorneys
12 general.

13 With regard to the initial disclosures on the Rule 26, we
14 note that with regards to Meta, we agreed to waive them. We're
15 just wondering if Your Honor's order would mean that we would
16 still need to do additional disclosures vis-a-vis Meta if we
17 are waiving them.

18 **THE COURT:** So I was going to ask about that
19 separately. Okay.

20 So Meta -- would Meta's initial disclosures to the state
21 AGs be different? If they were provided, would they be
22 different from the initial disclosures provided to the other
23 plaintiffs?

24 **MS. SIMONSEN:** I'd obviously want to think about that
25 a bit more, but I think they would be substantially similar

1 because the claims in the issues across these sets of
2 plaintiffs are -- overlaps substantially, if not entirely.

3 **THE COURT:** Right.

4 **MS. SIMONSEN:** If we were required to serve initial
5 disclosures on the state attorneys general in addition to the
6 personal injury and school district plaintiffs, we believe it
7 would be absolutely appropriate for the states attorneys
8 general to serve them on us. We had proposed, as an
9 alternative to initial disclosures, that a date be set for the
10 disclosure of witnesses for trial.

11 And with -- and the reason for that is because, you know,
12 we do recognize that that's the one element of the initial
13 disclosures that perhaps hasn't yet entirely been provided by
14 virtue of, for instance, the document productions to date.
15 Although, I will submit that with the volume of documents
16 produced, they probably have a pretty good idea of who our
17 witnesses may be.

18 But if Your Honor isn't going to set such a deadline for
19 the disclosure of witnesses, then we would need initial
20 disclosures from the state attorneys general as well.

21 **MR. WARREN:** Your Honor, Previn Warren for the
22 personal injury plaintiffs.

23 Couple points, if I may. First of all, just in the
24 interest of clarity for the record, the personal injury, school
25 district, local government plaintiffs have not reached any

1 agreement with Meta to waive initial disclosures. We don't
2 think that's appropriate.

3 I have no idea who Meta's witnesses will be at all.
4 Granted, they've produced some documents to the attorneys
5 general that have been reproduced here. That's a far cry from
6 understanding who knew what. Not only does Rule 26(a) provide
7 for witnesses that are pertinent to the claims the plaintiffs
8 are asserting, it also provides for disclosure of the witnesses
9 that would support the defendants' affirmative defenses, as to
10 which we are really just in the process of learning.

11 So we don't really think that the disclosure of trial
12 witnesses two years from now is an appropriate substitute for
13 telling us who knew what within the next week, which is really
14 what we would ask for in terms of the timing of the 26(a)(1)
15 disclosures from the defendants.

16 **THE COURT:** Mr. Huynh, if Meta is going to be
17 providing substantially the same initial disclosures to the
18 other coplaintiffs, what's the point of waiving?

19 **MR. HUYNH:** Your Honor, Thomas Huynh for the state
20 attorneys general.

21 We tried to waive in order to increase efficiency so that
22 we wouldn't have to do, I guess, an initial set of disclosures
23 to Meta as a defendant.

24 To the extent, though, Your Honor is inclined to provide
25 initial disclosures, I can take that back with my group and

1 then we can try and see among the 33 jurisdictions how to
2 organize and also provide those initial disclosures.

3 **THE COURT:** If I order you to provide initial
4 disclosures, you're going to provide initial disclosures.

5 **MR. HUYNH:** Of course, Your Honor.

6 (Laughter.)

7 **THE COURT:** You'll see it in my order, but I'm
8 inclined to require everyone to exchange initial disclosures
9 across the entirety of all the cases.

10 **MS. SIMONSEN:** We would request more than one week to
11 prepare those, given that we had been meeting and conferring
12 about the possibility of waiving them and had at least one
13 plaintiff group that was agreeing to waive them. So one week
14 is certainly not enough time. We would submit --

15 **THE COURT:** That's going to be our next question. So
16 I know they want them right away, and we want more than a week.
17 How much time do the defendants propose that they think
18 they need?

19 **MS. SIMONSEN:** May I confer briefly with my
20 codefendants?

21 (Conferring.)

22 **MS. SIMONSEN:** Apologies. Ashley Simonsen for the
23 Meta defendants.

24 We believe a deadline of four weeks from today would be
25 doable for the defendants.

1 **MR. HUYNH:** Thomas Huynh for the state attorneys
2 general.

3 Your Honor, we conferred with our relative other states,
4 and we were under the impression that because we would be
5 waiving, it would be pretty burdensome for us to provide these
6 initial disclosures.

7 And we'd just note for Your Honor that to the extent that
8 Meta does want the initial disclosures, we would ask for
9 basically a reason for why, since we are the prosecuting agency
10 of a law enforcement agency and the burden -- or rather, the
11 large proportion of the evidence and the witnesses are going to
12 be with Meta, not with us.

13 **THE COURT:** So I don't think there's any exception in
14 Rule 26 for a party not to give initial disclosures just
15 because they're a government agency. And so to the extent you
16 don't know who the witnesses are because they're under the
17 control of the defendants then you don't list them in your own
18 initial disclosures.

19 I mean, typically, I've seen parties incorporate by
20 reference the other side's initial disclosures or other
21 people's initial disclosures. But certainly the rule is pretty
22 clear on its face: You're only required to disclose the things
23 that you know that are what people who are -- I forget the
24 exact terminology -- who are, you know, known or reasonably
25 believe or have information relevant to -- I'm misquoting but

1 you understand what I'm saying.

2 So I don't think it's going to be burdensome for you to
3 put together initial disclosures. And I -- again, there's no
4 exception in the rule for government agencies.

5 **MR. HUYNH:** Thomas Huynh for the state attorneys
6 generals.

7 In that case, Your Honor, with regards to our Rule 26
8 disclosures from Meta, we would then suggest that perhaps there
9 might be two tracks since we don't want to prejudice our other
10 plaintiffs with regards to the initial disclosures.

11 So the six -- I believe defendant said six weeks?

12 **THE COURT:** Four weeks.

13 **MS. SIMONSEN:** Four weeks.

14 **MR. HUYNH:** Four weeks might be acceptable, then, for
15 the two of us. But at the same time, we don't want to delay
16 the other plaintiffs when it comes to initial disclosures.

17 **THE COURT:** Is that -- can you take four weeks and
18 we're all on the same schedule?

19 **MR. HUYNH:** For us, yes.

20 **MR. WARREN:** That's absolutely fine, Your Honor.

21 **THE COURT:** Okay. Done. Four weeks it is, initial
22 disclosures. That will be my order.

23 But that's making a verbal order. You're ordered --
24 everybody is ordered to provide initial disclosures four weeks
25 from today.

1 Ms. Fox, what date is that?

2 THE CLERK: Four weeks from today? Court days or
3 regular days?

4 THE COURT: Calendar days.

5 MS. SIMONSEN: If I may briefly, Your Honor, I'm a
6 little unclear on how that's going to work for the plaintiffs,
7 because what they're representing is that their plaintiff fact
8 sheets are going to be essentially substitutes for their
9 initial disclosures. But plaintiff fact sheet data won't even
10 start to be produced at the absolute earliest in late March,
11 I believe, and that assumes that the plaintiffs are able to
12 access their accounts.

13 The plaintiffs' lawyers in the JCCP have represented that
14 the vast majority of their clients will need an additional step
15 to take place in the PFS process before they can even access
16 their accounts such that they can answer the plaintiff fact
17 sheets.

18 I would assume it might be similar for these plaintiffs,
19 and so I think, if it's going to be until probably later than
20 March that the plaintiffs are providing their initial
21 disclosures in the form of plaintiff fact sheets, it would seem
22 fair that the defendants should have the same amount of time to
23 provide their initial disclosures to the plaintiffs.

24 THE COURT: Okay. Do you need six weeks or more?

25 MR. WARREN: If I may briefly respond. Previn Warren

1 for the plaintiffs.

2 The plaintiffs' fact sheet process is working itself out
3 in the JCCP. It's going to be an extensive amount of
4 information. The PFS process has been heavily negotiated.

5 As I indicated, I think the initial disclosures we would
6 provide would essentially be a placeholder referencing that,
7 kind of a down payment on the PFSs that would get filed. It's
8 unfortunately just very different in kind to the information we
9 need from the defendants, which is simply: Who are the
10 witnesses; who are the employees; and what do they know?

11 That's information the defendants have been sitting on
12 since the outset of this litigation over a year ago. There
13 really isn't a need -- there isn't any other process that's
14 going to subsume that that justifies any kind of delay.

15 So we're happy to provide what's essentially a placeholder
16 initial disclosures in four weeks, and then the PFS process
17 will --

18 **THE COURT:** Let me stop you there. I mean, your
19 initial disclosures should be as complete as you can reasonably
20 make them at the time you're making them; right?

21 So to the extent your clients have information that
22 belongs in initial disclosure, I think you're obligated to put
23 it. You can't just have a blank placeholder. If you got --
24 you've got time to pull together at least some information.

25 **MR. WARREN:** Your Honor, it's simply not possible

1 given the number of individual plaintiffs and the counsel we'd
2 have to interface with. We do have a process that is literally
3 for the purpose of providing this information to the defendants
4 and having a new initial disclosure process insert itself into
5 that, I think, would be very disruptive to the efficiencies
6 that we've tried very hard to create around the sharing of this
7 information.

8 **THE COURT:** All right. So is counsel correct that you
9 probably won't get -- start actually issuing PFSS until late
10 March?

11 **MR. WARREN:** I believe something along that timeline
12 is correct, yes.

13 **THE COURT:** What about school districts?

14 **MR. WARREN:** There's a separate school district
15 plaintiff fact sheet process that's getting worked through
16 right now.

17 **THE COURT:** But in terms of just numerosity, there's
18 fewer school districts than there are individual plaintiffs,
19 aren't there?

20 **MR. WARREN:** No, Your Honor, actually that's not
21 correct; there's over 600.

22 **MS. SIMONSEN:** And, Your Honor, the plaintiff fact
23 sheet has not even been agreed to in the school district cases
24 in the JCCP. That is a whole other set of discovery that's
25 going to need to take place again before the close of fact

1 discovery that I haven't even touched on in that massive amount
2 of discovery I previously referenced.

3 I would also point out, Your Honor, that these plaintiffs'
4 lawyers have also had their clients for quite some time as
5 we've progressed through pleadings challenges, and their
6 plaintiff fact sheets will not contain their list of witnesses
7 that they expect to rely on for purposes of trial.

8 If we are going to be expected to begin identifying those
9 individuals in our disclosures in four weeks, then by the same
10 token, the plaintiffs should.

11 If, on the other hand, the plaintiffs want additional time
12 so that they can complete the plaintiff fact sheet process, it
13 would make sense in turn for our initial disclosures, the
14 defendants' initial disclosures, to similarly be delayed.

15 **MR. WARREN:** Your Honor, if I may, I'm very concerned
16 about the false equivalence here. We are not asking for trial
17 witnesses through the Rule 26(a) disclosures. And it's true
18 the PFS is not going to identify trial witnesses.

19 The purpose of both processes is to identify persons who
20 are knowledgeable and possess potentially relevant information.
21 That's what's at issue here. So there isn't any sense that,
22 you know, we're withholding the trial witness list and the
23 defendants are producing it. That's really not what's going on
24 here.

25 I will say the parties are just not going to be evenly

1 situated on all scores when it comes to some of these issues.

2 The PFS process has been designed using a centralized
3 platform that the parties have all spent a lot of time agreeing
4 on and working with so that the information can be ingested
5 into one place that can be summarized and downloaded for use in
6 bellwether selection and analyzed.

7 It has been a very extensive and successful effort in the
8 JCCP. Attempting to replicate that in a less efficient, less
9 technologically sophisticated way through 26(a) disclosures
10 really doesn't inure to the benefit of the defendants at all.
11 I doubt they would even have a chance to read, you know,
12 thousands of those documents when, just weeks later, they would
13 are getting it all in ingestible, usable data.

14 **THE COURT:** Are you planning to start issuing PFSs on
15 a rolling basis or are they going to just come in one final
16 batch?

17 **MR. WARREN:** I believe there will actually be
18 deadlines for when the PFSs have to be submitted into MDL
19 centrality upon on the entry of the PFS implementation order.

20 **THE COURT:** But what's the estimated first such
21 deadline?

22 **MR. WARREN:** I don't know that off the top of my head,
23 but I'm sure one of my counsel do. It will be soon. It will
24 be, you know, a couple of months, I believe.

25 Am I correct?

1 **MS. SIMONSEN:** Your Honor, that -- that's not correct.
2 There are a series of steps, as I mentioned, that have to take
3 place before plaintiff fact sheets can start to be produced.
4 And since the JCCP PFS implementation order has been entered,
5 there has been time for those steps to play out. There needs
6 to be time for those same steps to play out in the MDL.

7 So although we appreciate that plaintiffs are saying
8 they're going to try to produce plaintiff fact sheet data by
9 March, there is this interim step where they identify -- where
10 it is determined which plaintiffs they can't access their
11 account information for through publicly available tools that
12 the defendants provide.

13 After that, the defendants need to investigate to try to
14 identify the accounts that belong to those plaintiffs. That
15 then has to be confirmed by the plaintiffs. And for those
16 plaintiffs, defendants have then agreed to produce certain
17 information that would be in lieu of the information that the
18 plaintiffs could otherwise obtain through publicly available
19 tools.

20 And I think, again, that's just the personal injury
21 plaintiffs. We aren't even close to having a PFS
22 implementation order for the school districts. And I think
23 that really what all of this underscores is just how
24 unrealistic that November 2024 proposal plaintiffs made is by
25 more than a year because it's going to take a lot of time to

1 complete the plaintiff fact sheet process. It's going to take
2 more time to complete the defendant fact sheet process. Again,
3 large volumes of structured data that these plaintiffs are
4 requesting for every single one of the hundreds of plaintiffs
5 in these two sets of cases.

6 That -- it's not even just the volume of plaintiffs, it's
7 that process of producing structured data that is very time
8 intensive and burdensome on the defendants. And we have to --
9 that's just plaintiffs' side discovery before we get into
10 identifying plaintiffs for bellwether workups.

11 At the same time, we're going to be doing defense
12 discovery, but there simply, I submit, is not time to complete
13 fact discovery in these cases anywhere close to the timeline
14 that these plaintiffs are proposing.

15 **MR. WARREN:** Your Honor, may I?

16 I believe we're now slipping through many different
17 issues, retracting on some things that have already been
18 discussed.

19 There really isn't a dispute between the parties right now
20 about the plaintiffs' fact sheet process. We've been working
21 efficiently and effectively on that, primarily in the JCCP, but
22 also to some extent, in the MDL. It is going to be voluminous.
23 It is going to be daunting, and there will be a lot of data
24 involved.

25 My point simply is that we shouldn't short-circuit that by

1 interjecting some other process that's going to involve
2 thousands of static PDFs, nor do I think it has any bearing on
3 defendants' obligation to tell the plaintiffs who knew what,
4 which is something only they know and have withheld from
5 telling us, and would like to withhold telling us for another
6 two years, which would be incredibly prejudicial to our ability
7 to efficiently meet the deadlines that we're shooting for.

8 We are attempting to be intentional, targeted, and smart
9 about our discovery. Defendants routinely seem to mention the
10 number of RFPs. Well, the reason there's a lot of RFPs is
11 because we are going in surgically for the things that we need.
12 It's very easy to serve just one RFP that asks for all
13 documents on all things.

14 We are not doing that -- especially given that defendants
15 don't want to produce hyperlinked documents in the ordinary
16 course, we have to serve RFPs asking for those. And we've
17 already served over a dozen to that effect to ask for this
18 document linked in this document; right? So that, of course,
19 is going to increase the number of RFPs, but that -- that
20 doesn't increase the burden in any material way.

21 **THE COURT:** I'm going to stop you there because we're
22 going to lose our court reporter. So in the interest of time,
23 unless there's some critical issue or argument somebody needs
24 to make on initial disclosure deadlines, I'm going to stick
25 with four weeks.

1 **MR. HUYNH:** Judge, Thomas Huynh for the state
2 attorneys general.

3 Just a quick question: Can we consolidate all the
4 jurisdictions to one filing as opposed to having every
5 jurisdiction file its own separate filing?

6 **THE COURT:** If they're all making the same disclosure,
7 however you format it is up to you.

8 **MR. HUYNH:** Understood. Thank you, Your Honor.

9 **THE COURT:** If they're not making the same disclosure,
10 then I think that deserves a separate disclosure.

11 **MR. HUYNH:** Understood, Your Honor. Thank you.

12 **MR. WARREN:** Your Honor, I just want to be clear on
13 your anticipated ruling. You're asking that -- the thousands
14 of personal injury and school district plaintiffs to serve
15 initial disclosures identifying all the relevant witnesses and
16 everything else?

17 **THE COURT:** No. If you want to refer to the plaintiff
18 fact sheets as substituting for them or supplementing them
19 later -- okay, I'll remind everyone.

20 Everyone here has an ongoing duty to supplement their
21 initial disclosures as the case is going on. And so
22 preemptively, what I'm allowing you to do -- which is
23 unusual -- is to preemptively commit yourself to supplementing
24 your initial disclosures at the earliest possible time through
25 the plaintiff fact sheet process.

1 **MR. WARREN:** Thank you, Your Honor. Thank you.

2 **THE COURT:** All right. All right. Okay.

3 Discovery limits, interrogatories. So I've read the
4 competing proposals.

5 Who is going to speak to interrogatories?

6 **MR. WARREN:** Your Honor, Previn Warren for the
7 plaintiffs.

8 **THE COURT:** Okay. So across the plaintiffs, I mean, I
9 assume, similar to documents -- there are going to be some
10 common interrogatories that you would serve on all defendants;
11 right?

12 **MR. WARREN:** Yes, Your Honor.

13 **THE COURT:** Okay. And then, presumably, there will be
14 a smaller number of individual interrogatories that each
15 plaintiff group might want to serve on an individual
16 defendant -- right? -- on top of those?

17 **MR. WARREN:** Your Honor, I can't say whether it would
18 be smaller or larger. I don't know that at this point.

19 **THE COURT:** Okay. So -- and on the flip side, the
20 defendants are going to have essentially common interrogatories
21 to all the state attorneys general; right?

22 **MS. SIMONSEN:** The Meta defendants do anticipate that
23 what they serve will be consistent.

24 **THE COURT:** Let me ask -- I mean, maybe people can't
25 tell me -- is there an anticipation that there will be more

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1 defendants named in the course of this case on the state AGs'
2 case or are we really only talking about Meta for purposes of
3 discovery planning here?

4 **MS. SIMONSEN:** I certainly can't speak to that, Your
5 Honor.

6 **MR. HUYNH:** Thomas Huynh for the state attorneys
7 general.

8 We're not able to speak to that at this moment.

9 **THE COURT:** Okay. So, again, this is an issue. I
10 mean, plaintiffs basically wanted something like 65 rogs; the
11 defendants wanted something like 40. I can't believe you
12 couldn't find a number between 65 and 40 that you could
13 compromise on.

14 **MR. WARREN:** Your Honor, the personal injury
15 plaintiffs and defendants have -- you know, are trying to meet
16 in the middle and are in the process of meeting and conferring.
17 We've asked for 50 per defendant, they've asked for 40 per
18 defendant. I think we're both able to infer what a midpoint
19 might be, and we've proposed that to the defendant and are
20 awaiting their response. But that does leave the separate
21 issue of the state attorneys general.

22 **MS. SIMONSEN:** And, Your Honor, we just haven't had a
23 chance, all defendants, to speak to our clients about that
24 proposal. I think the critical point is that, from our
25 perspective, all of the interrogatories served should be served

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1 by all three sets of plaintiffs. And so if there is a
2 45-interrogatory limit, it should apply to all three sets of
3 plaintiffs: The personal injury plaintiffs, the school
4 district plaintiffs, and the state AGs.

5 **THE COURT:** I'm going to get to that.

6 So if you are still meeting and conferring, with all
7 due -- you know, all deliberate speed, try to -- I mean, again,
8 you're close to each other in the numbers, you should be able
9 to reach an agreement.

10 But for interrogatories and I think for requests for
11 admission, where it's a common set -- right? -- so all
12 plaintiffs are going to ask the same interrogatory of all the
13 defendants, there should be a number for that.

14 And if the plaintiffs feel like they need, per plaintiff
15 group, a limited number of other interrogatories to serve on
16 each or some or one individual defendant -- right? -- then you
17 can talk about that and kind of come up with a proposal.

18 So I was thinking something like, and these are just
19 numbers -- right? -- you know, X number for -- X number of
20 common interrogatories for all plaintiffs; right? And then Y
21 number of additional interrogatories for just the personal
22 injury plaintiffs. Y number of -- Z number of additional
23 interrogatories for just the state AG plaintiffs; right?

24 All right. And that way, we avoid the issue of
25 duplication across different service and different -- and it

1 gets more consolidated. So I want you to coordinate on that;
2 right?

3 Similarly if -- I guess it's not going to happen on the
4 defense side. If there were more than Meta in the state AG
5 cases, I was going to order you to do same thing, so -- but not
6 an issue.

7 Similar approach on the RFA limits. Okay? I don't want
8 there to be open-ended -- because RFAs can be abused just by
9 serving voluminous numbers of them; right? So see if you can
10 come up with a number that you can all agree to.

11 Similarly kind of common RFAs and then specific, if you
12 need to, a limited number of additional RFAs per subgroup of
13 plaintiff. Okay?

14 **MR. WARREN:** Thank you, Your Honor.

15 I think it would help to have a little early guidance from
16 you. The rules don't specify a limit for our phase, so it's
17 hard to find a midpoint between 100 and infinity. So if you
18 have some sense of where the Court would come out, that might
19 help orient the parties.

20 **THE COURT:** I think, one rule of thumb that I think is
21 easy to use is kind of gauging the number of RFAs to be roughly
22 equal to the number of interrogatories.

23 And I get it, on RFAs, if you need to use them to
24 authenticate documents later, and they're truly just document
25 authentication, hopefully you can do that by stipulation. But

1 if you need those kinds of RFAs, come back to me and ask for
2 leave to serve extra ones. All right?

3 **MR. WARREN:** Thank you, Your Honor.

4 I believe the defendants have already indicated that they
5 would not include RFAs concerning authenticity and
6 admissibility within the scope of any numerical limit, although
7 I don't want to speak for them.

8 **THE COURT:** Okay. Are you still meeting and
9 conferring on deposition limits and timing and all that or do
10 you need me to decide that for you?

11 **MS. SIMONSEN:** We did discuss this morning a potential
12 compromise on the number of depositions -- excuse me -- on the
13 hours limitation on depositions. The plaintiffs most recently
14 proposed 14 hours. The defendants have proposed a 10-hour
15 limit. And the plaintiffs have proposed a compromise on that.

16 I think we'll need to further meet and confer to see if we
17 can reach that agreement.

18 **THE COURT:** Okay.

19 **MS. SIMONSEN:** I think the larger issue, though, of
20 whether we're going to go with -- I think the plaintiffs have
21 proposed 40 depositions per defendant, plus 10 that can be
22 allocated to any particular defendant, plus 25 per defendant by
23 the AGs, versus 140 hours, which is roughly 20 depositions,
24 that the defendants would propose the plaintiffs collectively
25 get to take.

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1 We certainly, I think, could continue to meet and confer.
2 And I think with Your Honor's guidance about the need for the
3 three sets of plaintiffs to work together to find commonality
4 across discovery requests, if the plaintiffs can come back to
5 us and, as a group of three sets of plaintiffs, negotiate with
6 us on those types of limits, I think that could probably go a
7 long way toward potentially reaching an agreement here.

8 **MR. AYERS:** With respect to the state attorneys
9 general asking for some additional set of depositions --
10 obviously that's only with respect to Meta. It's not with
11 respect to the other three.

12 And so the deposition limit with respect to the other
13 three is set, what we proposed, at 40 depositions, plus this
14 kind of floating 10 that can be applied to either one because
15 not all of the defendants are identical.

16 Obviously Meta just recently consolidated and used to be
17 two different platforms with two sets of -- two sets of
18 different parties that are responsible for a lot of the time
19 period -- right? -- that goes back to the early 2000s. So it
20 makes sense that there would be certain floating to allow for
21 the plaintiff groups to take -- to be able to take additional
22 depositions depending on what's necessary as discovery.

23 But we're also talking about multinational corporations
24 with offices around the world, with thousands of employees,
25 producing tons of ESI every day. The idea that we'd be limited

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1 to a set of essentially 140 hours over 10 depositions -- over
2 10-hour depositions which is essentially 14 depositions of a
3 defendant is just not in the scope of reality of what type of
4 discovery we need to take in this litigation.

5 **THE COURT:** I hear you're meeting and conferring to
6 come to a number that you can agree to.

7 So in the interest of time, because I think we're going to
8 lose our court reporter, keep meeting and conferring. I do
9 agree that the plaintiffs -- similar to my approach on common
10 interrogatories and common RFAs, the depositions should be
11 common- -- commonly taken by the plaintiffs of a particular
12 defendant or defendant witness.

13 And you can try to negotiate whether it's a small amount
14 of hours or days or an individual plaintiff group to take an
15 individual, you know -- extra deposition here or there, that
16 obviously should be -- there should be allowance for that in
17 your negotiations. But I do encourage you to come up with
18 some -- because it sounds like -- again, if they're asking for
19 40, and you're roughly agreeing to 20, you should be able to
20 come up with a number that both can agree to in terms of
21 numbers of depositions.

22 **MS. SIMONSEN:** Your Honor, we're glad to keep meeting
23 and conferring.

24 I do want to flag that, of course, our proposals on
25 limitations were based on our proposed discovery schedule and

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1 with a completion of fact discovery anywhere close to what
2 plaintiffs are proposing, I'm not sure that it's going to be
3 realistic for us to be making the same proposal that we made,
4 which was premised on the type of discovery schedule. But we
5 will go back and meet and confer and see if we can reach an
6 agreement.

7 **THE COURT:** Sometimes you need to double-track
8 depositions; right?

9 **MS. SIMONSEN:** Understood. It would be a lot of
10 double-tracking.

11 **THE COURT:** Well, maybe not. They don't -- certainly
12 there's no requirement that you take every available deposition
13 that are in the numerical limits. These are limits, they're
14 not minimums.

15 **MS. SIMONSEN:** Understood, Your Honor.

16 **MR. AYERS:** And, Your Honor, we are obviously
17 agreeable to continue to meet and confer.

18 I just want to at least just mention that obviously the
19 limitations and restrictions that defendant posed with respect
20 to 30(b)(6) limitations are also just not in the realm of what
21 would be necessary with just 21 total --

22 **THE COURT:** Okay. You raise a -- so reach agreement
23 on -- negotiate -- if you can reach agreement on 30(b)(6)s too,
24 do that. But if you can't -- it seems to me, until you've
25 exchanged topics and actual notices, you don't know how many

1 30(b)(6) depositions there are going to be; you don't know how
2 many designees there's going to be. Until you actually see the
3 topics, it's a little bit speculative so -- not that I want to
4 talk about deposition scheduling constantly, but if you can't
5 reach an agreement for now on how to handle 30(b)(6)
6 depositions in terms of limits and all that -- I assume those
7 are not going to be the first depositions you take -- maybe
8 they are; right? But if you can't reach agreement, come back
9 to me and we'll try to figure it out.

10 But it seems to me exchanging even draft proposed topics
11 for the 30(b)(6) depositions might help because that would give
12 the defendants an indication of how many people, how many
13 designees they're going to need to tee up to address each of
14 the issues.

15 **MR. AYERS:** Thank you, Your Honor.

16 We'll meet and confer.

17 **MS. SIMONSEN:** Your Honor, the one note I would make
18 is that both sides do seem to agree in the plan that the
19 deposition limits that are set will apply to both 30(b)(6) and
20 non-30(b)(6) fact witnesses. I understand there's a dispute
21 about within that how many will be allocated to 30(b)(6), but I
22 just wanted that to be clear.

23 I see my co-counsel here is waiting to say something.

24 **MR. DONOHUE:** Thank you. Matthew Donohue for the
25 Google defendants.

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1 And I'll be brief because I understand the Court isn't
2 planning to enter any numerical requirements today.

3 But we'd just like to mention that we think that there are
4 some distinctions, possibly, between the parties as far as the
5 scope of the claims and the burden involved, and so we think
6 there might be some reasons for different numerical limits as
7 to different parties. But if we're going to go back and meet
8 and confer, we can deal with that then.

9 **THE COURT:** I assume the plaintiffs are going to be
10 reasonable in accommodating different limits if it's justified.

11 **MR. DONOHUE:** Thank you.

12 **THE CLERK:** Right. Mr. Ayers?

13 **MR. AYERS:** Right. We're going to meet and confer and
14 we'll be very reasonable in how we meet and confer and our
15 positions that are taken.

16 One comment in respect to the 30(b)(6)s that were just
17 mentioned. What we -- the parties agreed upon is that each
18 notice -- that we'll be able to serve discrete -- multiple
19 30(b)(6)s on discrete topics, and that each notice would count
20 as a deposition.

21 **THE COURT:** If that's what you've agreed to, that's
22 fine.

23 **MR. AYERS:** If they designate, for instance, multiple
24 witnesses per -- on a particular topic, that those wouldn't
25 count -- those wouldn't start chipping away at the total

1 number.

2 **MS. SIMONSEN:** In candor, Your Honor, I think -- I'm
3 just going to want to go back and confirm exactly what our
4 position is in light of the changes, but we're glad to meet and
5 confer on that point.

6 I would also just -- in response to counsel for Google's
7 comment, the Meta defendants would submit that, given the
8 allegations that are applicable to all of the defendants and
9 the claims asserted against all of the defendants, we don't see
10 that there's a need for a differentiation between them in terms
11 of the discovery.

12 **THE CLERK:** Raise that in the -- I assume you're all
13 meeting and conferring together and not kind of in -- maybe
14 you're meeting and conferring in separate caucus, I don't know,
15 but you can certainly raise that in the discussions. I'm sure
16 you'll reach consensus on that.

17 That last thing on depositions is the issue about
18 depositions of the state attorney generals. I wasn't
19 100 percent sure whether these are -- there's a dispute over
20 whether you could or couldn't take the depositions of a
21 30(b)(6) designee of the state attorneys general, or if you're
22 actually seeking to depose the state attorney general of each
23 of the plaintiff states.

24 **MS. SIMONSEN:** Your Honor, we -- I understand that you
25 may not have noticed where this was in our report, but what we

1 explained is that by saying "depositions of the state attorneys
2 general" what we mean is that includes other state agencies.

3 We don't expect to take our proposed number of
4 depositions, 140 hours, of the state attorneys general office
5 of each state. But we do need the ability -- these are --
6 these are individual parties, 34 of them -- including Florida,
7 which has now been transferred -- who have chosen to sue Meta
8 in this case.

9 They are parties. They are, therefore, subject to
10 discovery. We expect there to be -- as there have in other
11 MDLs, asserting analogous types of claims by state attorneys
12 general, we expect there to be discovery that we would need to
13 take of numerous state agencies. And, for that reason, we will
14 require depositions of the state attorneys general. Now --

15 **THE COURT:** Those would be 30(b)(6)s of the agency or
16 the office or --

17 **MS. SIMONSEN:** They would not necessarily be 30(b)(6)
18 depositions; there could be non-30(b)(6) depositions. But
19 regardless, there needs to be discovery of these parties who
20 have chosen to sue us in these cases.

21 And the state attorneys general originally seemed to
22 recognize that in proposing that we would get 20 depositions
23 of -- their proposal was all 34 state attorneys general, which
24 doesn't really make sense because you're not -- that's not even
25 accounting for one deposition for each one.

1 Our proposal is reciprocal with what we're proposing in
2 terms of the plaintiff depositions of defendants. And so we
3 would propose that those -- those depositions do need to
4 happen. And to the extent that the state attorneys general are
5 taking the position in this discovery plan, one hour before it
6 was due last Friday, that there should be no discovery of state
7 attorneys general, if Your Honor is remotely inclined to
8 indulge that notion, we would ask for the opportunity to brief
9 that.

10 **THE CLERK:** I'm not remotely inclined to indulge that
11 notion.

12 **MR. HUYNH:** Judge, Thomas Huynh for the state
13 attorneys generals.

14 So with regards to the depositions of the state attorneys
15 generals, we would note, as an initial matter, that we don't
16 actually represent the other state agencies that might comprise
17 our state, other than our client agency in specific states.

18 So with the example of New Jersey, New Jersey represents
19 the Division of Consumer Affairs in this matter. We don't
20 represent Bureau of Securities, or the Division of Child
21 Protection and Permanency. There's a series of other
22 third-party agencies that exist that would fall into the
23 purview of defendants' depositions that don't actually -- or
24 aren't actually represented by us and they would be third-party
25 subpoenas.

1 So they should not -- for depositions. So they should not
2 be counted in that amount, and they should not be served on the
3 state attorneys generals because we don't actually represent
4 those state agencies.

5 We'd also note that, with regards to serving -- with
6 regards to our position on this, so we had originally met and
7 conferred on the 16th about this matter. And we had raised the
8 idea of 20 depositions globally to us, but then upon reflection
9 and also after that discussion, we had concerns about what the
10 depositions would be reaching to, including these other
11 third-party state agencies that we simply aren't representing.

12 We also have concerns that these depositions would
13 constitute more or less a deposition upon a law firm since, for
14 example, with New Jersey, the division of law represents the
15 Division of Consumer Affairs. But we are, for all intents and
16 purposes, a prosecuting agency or law enforcement as well as a
17 law firm. So it would be akin to serving, say, a deposition
18 notice on myself or on another AAG or another attorney as
19 opposed to on, like, a fact witness.

20 We would note that with regards to this, there is case law
21 that discusses depositions of prosecuting agencies. And
22 although it's from the Eight Circuit, it's *Shelton v. Am.*
23 *Motors Corp.*, 805 F.2d 1323 to 1327, and that's the
24 Eighth Circuit, 1986.

25 Although it's from a different circuit, it has been often

1 cited in the Northern District of California for saying about
2 the test, about whether or not you can serve a deposition upon
3 a law firm.

4 And that test is (as read):

5 "Where no other means exist to obtain the
6 information than to depose opposing counsel, the
7 information sought is relevant and nonprivileged, and
8 the information is crucial to the preparation of the
9 case."

10 Your Honor, we submit that until Meta meets that burden,
11 it should be allowed to provide any depositions upon state
12 attorneys generals because we're functioning as law firms and
13 also as prosecuting agencies.

14 And with regards to serving of depositions on us, it is
15 strongly disfavored, and they bear the burden of showing that's
16 necessary, given that test.

17 **MS. SIMONSEN:** Your Honor, the state attorneys general
18 are suing on behalf of the states. And so they are not suing
19 on behalf of the Office of the State Attorney General. They
20 are suing on behalf of the states, who are the parties to these
21 cases.

22 And for that reason, we are entitled as defendants to
23 discovery of state agencies that may have relevant information.
24 We're not trying to depose the State Attorney General's office.

25 **THE COURT:** In the interest of time, the substantive

1 issue of whether those depositions should go forward or not is
2 not germane to the issue of scheduling and coming up with
3 limits and numbers of depositions because I don't agree that
4 there should be a blanket prohibition on taking depositions of
5 state agencies and state parties of the case, certainly.

6 If there -- if, you know, the defendants decide to do so
7 and can show a good reason why it's within the scope of
8 discovery. So just in terms of scheduling -- not scheduling --
9 setting limits and numbers of depositions, are you still
10 talking or are you done and do I just need to decide?

11 **MS. SIMONSEN:** We certainly would be prepared, Your
12 Honor, to discuss further with the state attorneys general if
13 they're open to discussing the possibility of actual
14 depositions taking place on the state AGs.

15 **MR. HUYNH:** Thomas Huynh for the state attorneys
16 general.

17 Your Honor, we're still open to conferring with defendants
18 about this. But we would still try to understand, like, better
19 what they're seeking in these depositions, especially given our
20 concerns about third-party state agencies not being represented
21 by us and also concerns about them potentially serving --

22 **THE COURT:** If the state agencies aren't represented
23 by you then isn't it incumbent on them to just serve the
24 subpoenas and confer with counsel for those other state
25 agencies?

PROCEEDINGS

1 **MR. HUYNH:** That would our position, Your Honor.

2 **THE COURT:** But that doesn't affect the goal here in
3 this order of just trying to set numbers and timing.

4 I mean, presumably, if there are valid objections to a
5 deposition on the merits, down the line, that gets raised
6 later. It doesn't get raised at the time of figuring out just
7 how many depositions they could take, assuming they could go
8 forward.

9 **MR. HUYNH:** Your Honor, we're, of course, open to
10 conferring with Meta on this and trying to get a better
11 understanding of it, and trying to set a schedule as well as
12 numbers to the extent it can be done.

13 **THE COURT:** All right. So, please, I direct everyone
14 to keep meeting and conferring on this; otherwise, I'm just
15 going to start setting some hard and fast numbers.

16 **MR. HUYNH:** Understood. Thank you, Your Honor.

17 **MS. SIMONSEN:** Understood, Your Honor.

18 I did want to note that our understanding is that these
19 deposition limits don't apply to third-party discovery, which
20 is something we haven't --

21 **THE COURT:** I didn't see that. I didn't see any
22 third-party limit to it. Since third parties aren't really
23 represented here, it's hard to set limits on that.

24 But, again, I admonish all parties not to abuse the
25 third-party discovery process. And Rule 45 certainly

1 admonishes the courts to be more solicitous of third parties.
2 So keep that in mind when you're issuing new third-party
3 subpoenas.

4 All right. I think I've finished the long march through
5 the proposed discovery plan. Is there anything left to
6 discuss?

7 **MR. AYERS:** I don't think so, Your Honor.

8 **MS. SIMONSEN:** Nothing from the defendants, Your
9 Honor. Thank you.

10 **THE COURT:** And I thank Madam Court Reporter for
11 giving us the time and energy to go through a long hearing.

12 I thank counsel for your time and efforts to prepare for
13 today, and I'm sure you'll have equally productive discussions
14 with Judge Gonzalez Rogers tomorrow.

15 So I will be issuing an order on the ESI. I'll be issuing
16 an order which in some part will be telling you just to go back
17 and meet and confer on some things on the other -- just things
18 like discovery limits and all that.

19 So I think I owe you two orders. Is there anything else I
20 owe you after this?

21 **MR. AYERS:** I think that's it, Your Honor, from the
22 plaintiffs.

23 **THE COURT:** Okay. All right.

24 Last call. Anything else to talk about?

25 **MS. SIMONSEN:** No. Thank you very much for your time,

1 Your Honor. We very much appreciate it.

2 **MR. AYERS:** Thank you very much.

3 **THE CLERK:** We're off the record in this matter.
4 Court is adjourned.

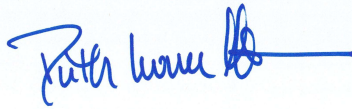
5 (Proceedings adjourned at 4:31 p.m.)

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8 **CERTIFICATE OF REPORTER**

9 I certify that the foregoing is a correct transcript
10 from the record of proceedings in the above-entitled matter.
11

12 **DATE:** Tuesday, January 30, 2024

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17 Ruth Levine Ekhaus, RMR, RDR, FCRR, CSR No. 12219
18 Official Reporter, U.S. District Court
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